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AGREEMENT

EPA Region 5 V-
CERCLA Docket No. ____

PROCEEDING UNDER SECTION
122(h)(1) of CERCLA,
42 U.S.C. § 9622(h)(1)

V-W- 93-C-473

1. This Agreement is made and entered into by the United States and Millennium Holdings, Inc. ("MHI"). The Agreement requires MHI, in lieu of performance of response actions, to pay response costs incurred and to be incurred in connection with the time-critical cleanup of the Bryant Mill Pond Area, which is part of one of the operable units ("OU") of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site in Allegan and Kalamazoo Counties, Michigan. The Bryant Mill Pond Area is further described and defined later in this Agreement. The Agreement is entered into pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9622(h)(1). The authority of the Administrator of the United States Environmental Protection Agency ("EPA") to enter into this Agreement has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation No. 14-14-D. MHI consents to and will not contest the United States' jurisdiction to enter into this Agreement or to implement or enforce its terms.

2. The Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, approves this Agreement pursuant to the inherent authority of the Attorney General to settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division.

3. A copy of this Agreement will be provided to the State of Michigan, which has been notified of this Agreement consistent with Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). By letter dated April 22, 1998, the Michigan Department of Environmental Quality ("MDEQ") notified EPA that it concurred with the determinations, recommendations and Performance Standard and goal contained in the Action Memorandum executed by Region 5 on April 17, 1998 regarding the Bryant Mill Pond Area. Consistent with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), the United States also notified the Department of Interior of negotiations with MHI regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

II. STATEMENT OF PURPOSE

4. The purposes of this Agreement are:
- a. to avoid prolonged and complicated litigation by allowing MHI to make a cash payment to resolve its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973 for the Bryant Mill Pond Area, for injunctive relief with regard to the Bryant Mill Pond Area, and for response costs incurred and to be incurred by the United States in connection with the Bryant Mill Pond Area, as set forth in Section V of this Agreement, subject to the reservation of rights included in Section VIII;
 - b. to facilitate the cleanup of PCB-contaminated sediments at the Bryant Mill Pond Area by providing for MHI to make payment to the United States in

settlement of such claims and to fund EPA's performance of response actions at the Bryant Mill Pond Area; and

- c. to provide for contribution protection for MHI with regard to the Bryant Mill Pond Area pursuant to CERCLA as set forth in Section X of this Agreement.

III. PARTIES BOUND

5. This Agreement applies to and is binding upon the United States, and upon MHI, as defined below. Any change in ownership or corporate status of MHI, including, but not limited to, any transfer of assets or real or personal property shall not alter MHI's responsibilities under this Agreement.

IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings ascribed to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto the following definitions shall apply:

- a. "Action Memorandum" shall mean that document executed by Region 5 of EPA on April 17, 1998 to authorize and describe time-critical response actions to be undertaken at the Bryant Mill Pond Area. Because the cost of the Removal Action may exceed \$6 million, Region 5 must secure approval of the Action Memorandum from EPA Headquarters. Region 5 anticipates that the Action Memorandum will be approved before the end of the public comment period provided by Section XIX of this Agreement. The Action Memorandum is incorporated into and made a part of this Agreement as Appendix A.

b. "Agreement" shall mean this agreement made pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), and the inherent authority of the Attorney General of the United States, and any attached appendices.

c. "Allied Paper" shall mean Allied Paper, Inc., which between 1955 and 1988 owned or operated certain paper manufacturing facilities located in the City of Kalamazoo, Michigan. Until 1988, Allied Paper was a wholly owned subsidiary of SCM Corporation. In 1986, SCM Corporation was acquired by HM Holdings, Inc., then a wholly-owned subsidiary of Hanson Industries, Inc. In 1996, Hanson Industries underwent a "de-merger." Millennium Chemicals, Inc. was formed, and HM Holdings became its wholly-owned subsidiary. HM Holdings then changed its name to Millennium Holdings, Inc.

d. "Allied Paper Operable Unit" or "Allied OU" shall mean that part of the Allied Paper/ Portage Creek/ Kalamazoo River Superfund Site between Cork and Alcott Streets which is approximately 50 acres in size and includes, but is not limited to, the Monarch and Bryant paper mills, the Bryant Mill Pond Area, the Historic Residuals Dewatering Lagoons ("HRDLs"), the Former Residual Dewatering Lagoons ("FRDLs"), the Former Type III Landfill, and the Western Disposal Area.

e. "Bryant Mill Pond Area" shall mean the historic 790 contour interval, which is the approximate elevation of the crest of the Alcott Street Dam when in use, as depicted on Appendix B of this Agreement. Appendix C to this Agreement depicts that portion of the Bryant Mill Pond Area at which PCB-contamination has been detected at levels requiring response action and, therefore, the area where EPA anticipates conducting work. The Bryant Mill Pond

Area does not include any "HRDL," or "FRDL," or the Former Type III Landfill or the Western Disposal Area, as depicted on Appendix B of this Agreement.

f. "Bryant Mill Pond Area Removal Action" or the "Removal Action" shall mean the response actions to be undertaken by EPA pursuant to the Action Memorandum executed by Region 5 on April 17, 1998 for the removal of PCBs from the Bryant Mill Pond Area of the Site.

The Removal Action may include, but need not be limited to, the following response actions:

- i. development of and implementation of a work plan, including a proposed time line;
- ii. development and implementation of a health and safety plan;
- iii. removal of all trees, shrubs and plants as necessary to complete the work;
- iv. temporary diversion, as necessary, of Portage Creek;
- v. excavation and/or dredging of PCB-contaminated residuals, soils and sediments from the Bryant Mill Pond Area;
- vi. preparation of the Bryant HRDL and, if necessary, the FRDLs, as those terms are defined above, for the placement of excavated and/or dredged PCB-contaminated soils, sediments and residuals from the Bryant Mill Pond Area;
- vii. transportation to and placement and dewatering of PCB-contaminated residuals, soils and sediments in the Bryant HRDL and, if necessary, the FRDLs;
- viii. grading of the contaminated residuals, soils and sediments in the Bryant HRDL so that the final slope or grade, after consolidation, is greater than 2%;
- ix. covering the residuals, soils and sediments placed in the Bryant HRDL and, consistent with the Action Memorandum, utilizing materials suitable for use as a landfill gas venting layer. These materials may be, in EPA's discretion, either fifteen inches of clean gravel or a synthetic system comprising a bedding layer, geofabric and geo-net; and in either event,

providing MHI with a 30 mil PVC geomembrane or equivalent capping material for the Bryant HRDL;

- x. treatment, as appropriate, of all water contained during the excavation phase of the Removal Action and within the Bryant HRDL, and if used, the FRDLs; and
- xi. backfilling, regrading and revegetating of excavated portions of the Bryant Mill Pond Area.

The Removal Action does not include maintenance of any HRDL or FRDL subsequent to the placement, regrading and covering of PCB-contaminated residuals, soils and sediments as outlined above. Nor does the Removal Action include any response activity, including remedial actions, at the Former Type III Landfill or Western Disposal Area, or any response activity which may be necessary to ensure long-term protectiveness of soils, surface water or ground water at or under any HRDL or FRDL.

g. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

h. "Certification of Completion" shall mean the final report by which EPA documents that the Removal Action has been completed in accordance with the requirements of the NCP and the Action Memorandum. The final report may be the On-Scene Coordinator's Report, the final pollution report for the Removal Action, or any other final report for the Removal Action prepared or approved by EPA's On-Scene Coordinator.

i. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

j. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

k. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

m. "Millennium Holdings, Inc." or "MHI" is the company defined in Paragraph 6.c., supra, and shall mean MHI, its subsidiaries, predecessors and successors, and their respective subsidiaries.

n. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including but not limited to any amendments thereto.

o. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or an upper case letter.

p. "Parties" shall mean the United States, on behalf of the United States Environmental Protection Agency and the United States Army Corps of Engineers, and MHI.

q. "Performance Standard" shall mean that standard established in the Action Memorandum for the removal of PCB-contaminated sediments, soils and residuals at the Bryant Mill Pond Area. In the Action Memorandum, EPA has established 10 ppm as the Performance Standard, with a Performance Standard goal of 1 ppm. By letter dated April 22, 1998, the

Michigan Department of Environmental Quality concurred with the Performance Standard and goal established in EPA's Action Memorandum.

r. "Polychlorinated biphenyls" or "PCBs" "shall mean the toxic pollutant and hazardous substance designated under Sections 307(a)(1) and 311(b)(2)(A) of the Clean Water Act, 33 U.S.C. § 1317(a) and § 1321(b)(2)(A). PCBs are also a CERCLA hazardous substance. See 42 U.S.C. § 9601(14).

s. "Section" shall mean a portion of this Agreement identified by a roman numeral.

t. "Site" shall mean the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, located in Kalamazoo and Allegan Counties, Michigan.

u. "State" shall mean the State of Michigan.

v. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. BACKGROUND

7. The United States and MHI recognize that this Agreement has been negotiated by the Parties in good faith and this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by MHI in accordance with this Agreement do not constitute an admission of any liability. MHI does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or determinations contained in this Section or in the Action Memorandum.

8. The Administrative Record for the Site contains significant factual information, data and analyses about the Site, the Allied OU and the Bryant Mill Pond Area. A separate

Administrative Record for the Bryant Mill Pond Area Removal Action has been established pursuant to 40 C.F.R. § 300.820(b), and will contain all of the information which EPA believes to be appropriate for inclusion in the Administrative Record for the Removal Action, as provided by 40 C.F.R. § 300.810. An index of the current Administrative Record for the Removal Action is attached as Appendix D. The Post-certification Administrative Record will include all appropriate information in accordance with the NCP, including without limitation, the current Administrative Record for the Removal Action, all data collected by EPA and its contractors during the Removal Action, the Certification of Completion and relevant and appropriate information which EPA receives from MHI. The Administrative Record for the Site indicates as follows:

a. Between 1957 and the early 1970's, Allied Paper was one of many paper companies which recycled carbonless copy paper at paper mills located at the Site. Carbonless copy paper contained invisible spheres of PCB-carrying solvents. As a preparation step in the recycling process, Allied Paper de-inked its recyclable paper, which included, at various times, carbonless copy paper. The process of de-inking and subsequent pulping of carbonless copy paper released PCBs into the resulting wastestream. See generally Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, "Description of the Current Situation" (BBL 1992) ("DCS".)

b. Allied Paper's operations at the Allied OU consisted of two paper mills: the Monarch Mill and the Bryant Mill. Allied Paper operated the Monarch Mill starting in 1955 and installed a clarifier shortly thereafter. In 1954, Allied Paper's predecessor installed a clarifier at the Bryant Mill. Allied Paper became owner of the Bryant Mill in 1956. Prior to the installation

of the clarifiers, wastewater was discharged directly into Portage Creek. After installation of the clarifiers, the supernatant was discharged either to Portage Creek or to the City of Kalamazoo wastewater treatment facility, while the settled residuals were placed in dewatering lagoons. Dewatered residuals were removed from the lagoons and either used as fill on the property or placed in a landfill which Allied Paper established in 1966 and used until 1988. [DCS pp. 3-7 to 3-11; Technical Memorandum 7, p. 1-2 (BBL 1994).]

c. Allied Paper ceased de-inking operations at the Monarch Mill in 1958 and closed the mill 1980. Allied Paper owned the Bryant Mill until 1988. Deinking operations were discontinued at the Bryant Mill in 1971. [DCS pp. 3-7, 3-8.]

d. PCBs have been detected in the dewatered residuals, Bryant Mill Pond Area floodplain and sediments, and Portage Creek sediments located in the Bryant Mill Pond Area at levels ranging from .025 ppm to 1000 ppm. [Tech Memo 7.]

9. The State issued a public health advisory relating to Portage Creek downstream from Monarch Dam as a result of PCB contamination from the Site. The advisory warns against eating carp, suckers, catfish and largemouth bass from these waters. The advisory warns nursing mothers, pregnant women, women who expect to bear children and children below the age of 15 not to eat certain species of fish from these waters.

10. In 1971 and 1972, MDNR established that the Kalamazoo River was discharging PCBs into Lake Michigan and that the PCBs in the River were bioavailable. After MDNR scored the Site using the CERCLA Hazard Ranking System, it was placed on the NPL in 1990. By agreement between EPA and the State, the Site was designated a State Enforcement Lead Superfund site.

11. In the case of Frank J. Kelley, Attorney General of the State of Michigan et al. v. Allied Paper, Inc. et al., No. L. 87-89 CA5 (W.D. Mich.), HM Holdings Inc., the predecessor-by-name-change to MHI, stipulated, for purposes of the claims set forth in the complaint in that case, to waive of the defense that it is a separate corporate entity from Allied Paper. By executing this Agreement, MHI stipulates, for purposes of this Agreement only, including any claims brought under the reservations in Section VIII herein, to waive any defense that it is a separate corporate entity from Allied Paper.
12. Between 1986 and 1993, MHI undertook a number of investigative activities in cooperation with the State. In 1993, MHI commenced a Remedial Investigation/Feasibility Study for the Allied OU of the Site. The Remedial Investigation/Feasibility Study is ongoing.
13. During the summer of 1997, residents of the Kalamazoo, Michigan and surrounding areas became concerned over the continued presence of PCBs in the sediments of Portage Creek and the Kalamazoo River.
14. During the summer of 1997, EPA began to investigate what actions could be taken to address at least a portion of the upstream source of PCB contamination. EPA investigated several response actions that could be taken at the upstream source area, and concluded that the most effective response action would be the dredging and/or excavation of PCB-contaminated residuals, soils and sediments in the Bryant Mill Pond Area and the placement of the excavated material in the HRDLs and/or FRDLs, subject to MDEQ's selection of a final remedy for the Allied OU.
15. On April 17, 1998, Region 5 of EPA executed an Action Memorandum which identified the excavation of PCB-contaminated residuals, soils and sediments in the Bryant Mill Pond Area

and placement of the material on-site as the appropriate response action to be taken to address a significant upstream source of PCB-contamination in Portage Creek, the Kalamazoo River, and Lake Michigan. In the Action Memorandum, attached to and made a part of this Agreement as Appendix A, Region 5 recommended conducting the response action as a time-critical removal action pursuant to 40 C.F.R. § 300.415. The Action Memorandum specified that a final decision with regard to the disposition of the PCB-contaminated residuals, soils and sediment would be made by MDEQ in the final Record of Decision for the Allied OU. The Bryant Mill Pond Area Removal Action is intended to address the imminent and substantial endangerment to human health and the environment present at the Bryant Mill Pond Area, and to be consistent with what EPA anticipates will be the final remedy to be selected by MDEQ.

16. EPA intends to conduct the Removal Action, and incur response costs associated therewith, in order to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Bryant Mill Pond Area.

17. MHI agreed to finance EPA's time critical removal action pursuant to the terms of this Agreement.

18. As part of its overall remediation plan for the entire Site, MDEQ currently intends to issue a Proposed Plan for the Allied OU during the Summer of 1998. Subsequent to issuance of the Proposed Plan, MDEQ, in consultation with EPA, will propose a final remedy for the Allied OU. The Allied OU final remedy is likely to include, but may not be limited to, final response actions selected for those areas at which contaminated soils and sediments from the Bryant Mill Pond Area will be placed during and after the Removal Action, i.e. the Bryant

HRDL and, if necessary, FRDLs. On the basis of previous decisions made by MDEQ at the Site, as well as ongoing discussions between MDEQ and Region 5 of EPA, it appears that MDEQ will propose, as part of the final remedy for the Allied OU, consolidation and capping of the excavated residuals, soils and sediment placed in the Bryant HRDL and, as needed, FRDLs, in accordance with Part 115 of the Michigan Solid Waste Landfill closure regulations. In order to implement such a remedy, Region 5 of EPA would need to waive certain landfill requirements of TSCA or approve an application made under 40 C.F.R. § 761.60(a)(5)(iii). EPA has concurred with a consolidation and capping remedy, and granted a TSCA waiver, for PCB-contaminated soils and residuals at the King Highway Landfill Operable Unit of the Site, and is currently considering MDEQ's request for a TSCA waiver in connection with the proposed remedy at the 12th Street Landfill Operable Unit. Furthermore, while EPA has not started the formal evaluation process for the Allied OU, Region 5 has committed to coordination between the Superfund and TSCA programs with respect to the Allied OU. Subsequent to selection of the remedy for the Allied OU, MDEQ will select remedies for the remaining operable units at the Site, and for areas of contamination not included in an operable unit, if any.

19. EPA has determined the following:

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Bryant Mill Pond Area is a portion of the Site at which hazardous substances have come to be located, and from which hazardous substances have been released and threaten to be released.
- b. Polychlorinated biphenyls are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. MHI is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is therefore liable for response costs incurred and to be incurred at or in connection with the Removal Action.

d. The unsecured presence of PCB-contaminated soils and sediments at the Bryant Mill Pond Area constitutes an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22).

e. As set forth in the Action Memorandum, which is attached as Appendix A to this Agreement, the conditions present at the Bryant Mill Pond Area constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP, 40 C.F.R. § 300.415(b)(2).

f. The actual or threatened release of hazardous substances from the Bryant Mill Pond Area may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal actions specified in the Action Memorandum are consistent with the NCP and are necessary to protect the public health, welfare, or the environment.

VI. REIMBURSEMENT OF RESPONSE COSTS

20. Payment of Response Costs to the United States.

Within 5, 60 and 180 days of the effective date of this Agreement, as defined in Section XIX, MHI shall pay to the EPA Hazardous Substance Superfund, respectively, \$4.0 million, \$1.5 million and \$2 million. Unless EPA directs otherwise, each payment shall be sent via Electronic

Funds Transfer to EPA's Region 5 lockbox bank, referencing: the name and address of MHI; the Site name; the Bryant Mill Pond Area; the Site/Spill ID Number 059B; and the EPA docket number for this action. Payment shall be made in accordance with instructions provided to MHI by EPA upon EPA's execution of this Agreement. Payments via Electronic Funds Transfer must be received at the Region 5 lockbox bank by 11:00 A.M. (Central Time) to be credited on that day. Notice of each payment made pursuant to the terms of this Paragraph shall be sent to EPA as provided in Section XV (Notices and Submissions).

21. The total amount to be paid pursuant to this Agreement shall be deposited in the Bryant Mill Pond Area Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance the Bryant Mill Pond Area Removal Action. The amount to be deposited in the Bryant Mill Pond Special Account includes a premium in the amount of \$1.7 million to compensate the United States for the risks that costs incurred or to be incurred in connection with the Bryant Mill Pond Area Removal Action will exceed the costs estimated in the Action Memorandum; and response actions other than those specified in the Action Memorandum may be necessary to address the risk to human health or the environment identified in that document. Nothing herein shall prevent the United States from exercising its rights to take administrative or judicial action as provided in Paragraphs 28 (United States' Pre-certification reservations) and Paragraph 29 (United States' Post-certification reservations).

If, after EPA issues its Certification of Completion, funds remain in the Bryant Mill Pond Area Special Account in an amount less than \$500,000, EPA will cause all or any portion of such funds to revert to the EPA Hazardous Substances Superfund. If, after EPA issues its Certification of Completion, funds remain in the Bryant Mill Pond Area Special Account in an

amount that exceeds \$500,000, EPA will cause \$500,000 to revert to the EPA Hazardous Substance Superfund, and the remaining balance of the funds in the Bryant Mill Pond Area Special Account will be used, consistent with Section 300.415(d) of the NCP, 40 C.F.R. § 300.415(d), to contribute to the efficient performance of any anticipated long-term remedial action at the HRDLs and FRDLs.

VII. FAILURE TO COMPLY WITH AGREEMENT

22. Interest on Late Payments.

In the event that any payment required by Section VI is not made when due, Interest, in accordance with the definition contained in Paragraph 6 shall accrue on the unpaid balance, through the date of payment.

23. Stipulated Penalty.

If any amounts due under this Agreement are not paid by the required date, MHI shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 22, \$500 per day for each day that such payment is late. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments under this Paragraph shall be designated as "stipulated penalties" and shall be made in accordance with the instructions in Paragraph 20. above. Copies of any check paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to EPA as provided in Section XV (Notices and Submissions). Penalties shall accrue as provided above regardless of whether the United States has notified MHI of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity.

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Agreement. In its unreviewable discretion, the United States may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

24. In addition to the Interest and stipulated penalty payments required by this Section, MHI's failure or refusal to comply with any terms or condition of this Agreement shall make it subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C.

§ 9622(h)(3).

25. If the United States must bring an action to enforce this Agreement, MHI shall reimburse the United States for all costs of such action, including but not limited to the cost of attorney time.

26. Payments made under Paragraphs 22-25 shall be in addition to any other remedies or sanctions available to the United States by virtue of MHI's failure to make timely payments required by this Agreement.

VIII. UNITED STATES' COVENANT NOT TO SUE

27. In consideration of the payments that will be made by MHI under the terms of this Agreement, and except as specifically provided in Paragraphs 28-29, the United States covenants not to sue or to take administrative action against MHI pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Bryant Mill Pond Area or the Removal Action (subject to those definitions). Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Section VI. With respect

to future liability, these covenants not to sue shall take effect upon issuance of the Certification of Completion by EPA. These covenants not to sue are conditioned upon the complete and satisfactory performance by MHI of its obligations under this Agreement.

28. United States' Pre-certification reservations.

Notwithstanding any other provision of this Agreement, the United States reserves, and this Agreement is without prejudice to, the right to issue an administrative order or to take judicial action seeking to compel MHI to: (1) perform further response actions relating to the Bryant Mill Pond Area; or (2) reimburse the United States for additional costs of response if, prior to Certification of Completion of the Removal Action:

- (i) conditions at the Bryant Mill Pond Area, previously unknown to the United States, are discovered, or
- (ii) information concerning the Bryant Mill Pond Area, previously unknown to the United States, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Removal Action is not protective of human health or the environment.

29. United States' Post-certification reservations.

Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to issue an administrative order or to take judicial action seeking to compel MHI to: (1) perform further response actions relating to the Bryant Mill Pond Area; or (2) reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Removal Action:

- (i) conditions at the Bryant Mill Pond Area, previously unknown to the United States, are discovered, or
- (ii) information concerning the Bryant Mill Pond Area, previously unknown to the United States, is received, in whole or in part,

and these previously unknown conditions or this information, together with other relevant information, indicates that the Removal Action is not protective of human health or the environment.

30. For purposes of Paragraph 28 (Pre-Certification Reservation of Rights), the information and the conditions known to the United States shall include only that information and those conditions known to the United States as of the date of the Action Memorandum for the Bryant Mill Pond Area, as set forth in the Administrative Record supporting the Removal Action, the Index of which is attached as Appendix D. For purposes of Paragraph 29 (Post-Certification Reservation of Rights), the information and the conditions known to the United States shall include only that information and those conditions known to the United States as of the date of the Certification of Completion, as set forth in the Post-Certification Administrative Record supporting the Removal Action, as described in Paragraph 8, and the On-Scene Coordinator's Appendix File.

31. General reservations of rights.

The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 27. The United States reserves, and this Agreement is without prejudice to, all rights against MHI with respect to all other matters, including but not limited to, the following:

(1) liability for response actions taken or to be taken, or for response costs incurred or to be incurred in connection with response activities, at the Site which are unrelated to the Removal Action or the Bryant Mill Pond Area;

(2) liability for response costs that have been or may be incurred by any federal agencies other than EPA, the United States Army Corps of Engineers, or the Department of Justice on behalf of either EPA or the Army Corps of Engineers;

(3) claims based on a failure by MHI to meet a requirement of this Agreement;

(4) liability arising from the past, present, or future disposal, release, or threat of release of any hazardous substance, pollutant or contaminant outside of the Bryant Mill Pond Area, or future releases by MHI at the Bryant Mill Pond Area;

(5) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment; and

(6) criminal liability.

IX. COVENANTS BY MHI

32. Subject to the reservations in Paragraph 33, MHI hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Bryant Mill Pond Area, the Removal Action, or this Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, based on Sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 106(b)(2), 9607, 9611, 9612 or 9613, or any other provision of law;

b. any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Bryant Mill Pond Area; or

c. any claim arising out of response activities at the Bryant Mill Pond Area, including claims based on EPA's selection of response actions.

33. MHI reserves, and this Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim against the United States shall not include a claim for damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any claim include a claim based on EPA's selection of response actions. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing herein affects the amenability to suit, consistent with Section 119 of CERCLA, of EPA response contractors conducting work at the Bryant Mill Pond Area.

34. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

35. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. The United States and MHI each expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Bryant Mill Pond Area against any person not a party hereto.

36. The Parties agree that MHI is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred at or in connection with the Removal Action or the Bryant Mill Pond Area, as defined above. The "matters addressed" in this Agreement do not include those response actions or those response costs as to which the United States has reserved its rights under Paragraph 31 of this Agreement (except for claims for failure to comply with this Agreement), in the event that the United States asserts rights against MHI coming within the scope of any such reservation.

37. MHI agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. MHI also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify the United States in writing within 20 days of service of the complaint or claim upon it. In addition, MHI

shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Agreement.

38. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Bryant Mill Pond Area, MHI shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section VIII (United States' Covenants Not to Sue). Nothing herein or in Paragraph 32 constitutes a waiver by MHI of any defense or claim that may be asserted by law in response to any claim brought by the United States pursuant to this Paragraph or pursuant to the reservations in Section VIII (United States' Covenant Not to Sue), provided, however, that MHI will not have a claim for reimbursement of any funds paid under Paragraph 20 of this Agreement.

XI. SITE ACCESS AND MEETINGS

39. The agreements among EPA, MHI, and LeMean Property Holding Corporation with respect to access at the Site and the Bryant Mill Pond Area thereof are or will be contained in a separate agreement, administrative order or administrative consent order.

40. The Parties anticipate that, subsequent to the Bryant Mill Pond Area Removal Action, the State will require remedial response activities by MHI at the Bryant HRDL, and further understand that certain work to be performed during the Removal Action may affect the nature

and scope of the remedial response to be required by the State. To ensure compatibility between EPA's Removal Action and subsequent remedial activity to be performed by MHI, the Parties agree to meet at the times specified below to share technical information about, and attempt to reach agreement on such work. The Parties agree to hold such meetings:

- (a) prior and subsequent to grading of the Bryant HRDL or, if used, FRDLs, in preparation for covering materials;
- (b) prior to making any final decision with regard to the appropriateness of a TSCA waiver for the Bryant HRDL;
- (c) prior and subsequent to covering the residuals, soils and sediments placed in the Bryant HRDL and, if used, FRDLs;
- (d) prior and subsequent to significant decisions concerning the installation of materials suitable for use as a gas venting layer at the Bryant HRDL;
- (e) prior to delivery or installation of a 30 mil PVC geomembrane or equivalent capping material for the Bryant HRDL; and
- (f) prior to demobilization at the Bryant Mill Pond Area.

The Parties may agree that any or all of the meetings specified above are unnecessary, or may agree that additional meetings on other technical issues are appropriate.

To ensure protection of human health and the environment, and to ensure compatibility of the Removal Action with the final remedial action for the Bryant HRDL, the Parties agree that they will attempt to resolve any disagreements informally. If the technical representatives of the Parties are unable to reconcile the Parties' positions concerning the grading of the Bryant HRDL or installation of a venting layer there, then MHI may submit to Region 5's Director of the

Superfund Division such written material as MHI deems relevant and appropriate concerning grading of the Bryant HRDL or installation of the venting layer. EPA will consider the materials submitted by MHI before making a decision on the issue.

XII. ACCESS TO INFORMATION

41. MHI shall provide to the United States, upon request, copies of all documents and information within its possession or control or that of their contractors or agents relating to activities at the Bryant Mill Pond Area, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Bryant Mill Pond Area. EPA shall provide to MHI, upon reasonable request and within a reasonable time frame, copies of all sampling results and data collected during the Removal Action.

42. Confidential Business Information and Privileged Documents

a. MHI may assert business confidentiality claims covering part or all of the documents or information submitted to the United States under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by the United States will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the United States, or if the United States has notified MHI that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to MHI.

b. MHI may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If MHI asserts such a privilege in lieu of providing documents, MHI shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only.

43. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Bryant Mill Pond Area.

XIII. RETENTION OF RECORDS

44. Until 10 years after the effective date of this Agreement, MHI shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to response actions taken at the Bryant Mill Pond Area or the liability of any person for response actions conducted and to be conducted at the Bryant Mill Pond Area, regardless of any corporate retention policy to the contrary.

45. At the conclusion of this document retention period, MHI shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, MHI shall deliver any such records or documents to the United States. MHI may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If MHI asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only.

XIV. CERTIFICATION

46. By signing this Agreement, MHI certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents and information, and has made available to the United States and/or MDEQ, all documents and information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates to the ownership, operation or control of the Bryant Mill Pond Area, or to the ownership, possession, generation, treatment, transportation, storage or

disposal of a hazardous substance, pollutant or contaminant at or in connection with the Bryant Mill Pond Area;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Bryant Mill Pond Area after notification of potential liability by the State or by the United States or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA and State requests for documents or information regarding the Bryant Mill Pond Area and MHI's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XV. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Agreement.

As to the United States or EPA:

Brad Stimple
On-Scene Coordinator
United States Environmental Protection Agency
77 W. Jackson Blvd. SE-5J
Chicago, IL 60604

Eileen L. Furey
Associate Regional Counsel
United States Environmental Protection Agency
77 W. Jackson Blvd. C-14J
Chicago, IL 60604

As to MHI:

Gregory Peterson
LTI Environmental Engineering
501 Avis Dr.
Ann Arbor, MI 48108

Bonnie Barnett
Drinker Biddle & Reath LLP
Philadelphia National Bank Bldg.
1345 Chestnut Street
Philadelphia, PA 19107-3496

XVI. INTEGRATION/APPENDICES

48. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A is the Action Memorandum;

Appendix B is the map depicting the aerial extent of the Bryant Mill Pond Area;

Appendix C is the map depicting that portion of the Bryant Mill Pond Area at which EPA anticipates conducting time-critical removal tasks;

Appendix D is the Administrative Record Index for the Removal Action as of the effective date of this Agreement.

XVII. OTHER CLAIMS

49. Except as expressly provided in Section VIII (United States' Covenant Not To Sue), nothing in this Agreement constitutes a satisfaction of or release from any claim or cause of action against MHI or any person not a party to this Agreement, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

XVIII. ATTORNEY GENERAL APPROVAL

50. The Attorney General or her designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XIX. EFFECTIVE DATE AND COMMENT PERIOD

51. This Agreement shall be subject to final approval by the Director, Superfund Division, EPA Region 5, and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice. Following such approval, this Agreement shall be subject to a thirty-day comment period and, if requested, an opportunity for a public meeting in the affected area. After consideration of any comments submitted during the comment period, the United States or EPA may withhold consent to all or part of this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. In the event that consent is withheld as a result of public comments received, this Agreement shall be null and void and MHI shall not be obligated to make the payment required by this Agreement. This Agreement shall become effective when the United States issues notice to MHI that the United States is not withdrawing from the Agreement.

XX. SIGNATORIES

52. Each undersigned representative of a signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

IN THE MATTER OF:

The Bryant Mill Pond Area of Allied Paper/Portage Creek/Kalamazoo River Superfund Site
Kalamazoo, Michigan

Agreed this ____ day of ____, 1998

Millennium Holdings Inc.

BY: Samuel Friedman DATE: May 21, 1998
Title: Vice President

BY: W. E. Muno DATE: 5/28/98

William E. Muno, Director
Superfund Division
United States Environmental Protection Agency
Region 5

BY: _____ DATE: _____

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

XX. SIGNATORIES

52. Each undersigned representative of a signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

IN THE MATTER OF:

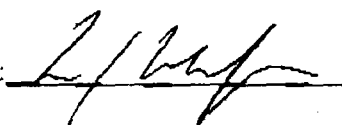
The Bryant Mill Pond Area of Allied Paper/Portage Creek/Kalamazoo River Superfund Site
Kalamazoo, Michigan

Agreed this _____ day of _____, 1998

BY: _____ DATE: _____
Title:

BY: _____ DATE: _____

William E. Muno, Director
Superfund Division
United States Environmental Protection Agency
Region 5

BY:  DATE: 6/2/98

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Appendix A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 28 1998

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Region 5 Request for Approval of a \$2 Million Exemption for a Time-Critical Removal at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, Kalamazoo, Michigan -- **ADDENDUM**

FROM: Stephen D. Luftig, Director *Elaine Doreas Jr*
Office of Emergency and Remedial Response

TO: Timothy Fields, Jr.
Acting Assistant Administrator

This addendum transmits Region 5's Action Memorandum, which requests an exemption from the \$2 million statutory limit and approval to expend up to \$7.5 million for a time-critical removal action at the Bryant Mill Pond Area of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, Kalamazoo, Kalamazoo County, Michigan. The Action Memorandum indicates that this removal qualifies for an exemption both on an emergency basis and because it is "consistent with the remedial action to be taken". This site is on the National Priorities List (NPL). Because estimated costs for this removal exceed \$6 million, Assistant Administrator approval of the emergency exemption is required.

Region 5's attached Action Memorandum provides a detailed explanation of this site and the release that constitutes an imminent and substantial endangerment to public health or welfare or the environment. The Action Memorandum clearly documents the health and ecological risk from the PCB-contaminated sediments. The confidential enforcement addendum provides additional information related to funding for this action.

Prior to and since the drafting of the Action Memorandum, significant amounts of information about the Site has been provided to Region 5, primarily by Millennium Holdings, Inc. ("MHI"), the successor company to Allied Paper, Inc., and the party with whom U.S. EPA has recently finalized negotiations for a cashout agreement for the Bryant Mill Pond time-critical removal action.

None of the information supplied to date by MHI has altered the Agency's decision regarding the imminent and substantial endangerment to human health or the environment present at the

Bryant Mill Pond Area, or the need for the proposed time-critical removal action. During the course of negotiations, however, several minor inaccuracies in the Action Memorandum have been noted by MHI, particularly in the document's description of the background of the Site. The Michigan Department of Environmental Quality ("MDEQ"), too, has reviewed the Action Memorandum and has suggested several modifications. Region 5 has reviewed the suggestions of both MHI and MDEQ, and has determined that, in order to make the Action Memorandum consistent with the "Background" portion of the cashout agreement, certain modifications should be made. Accordingly, the final Action Memorandum for the Bryant Mill Pond Area removal action will be modified as follows:

1) Page 1, paragraph 2:

MDEQ has suggested that the Action Memorandum state the month of the year that the Site was listed on the National Priorities List. Accordingly, the first sentence of the paragraph will be modified as indicated:

The Site, designated as State Enforcement lead by agreement between Region 5 and the State of Michigan, was listed on the National Priorities List (NPL) in **August**, 1990.

2) Page 2, first full paragraph:

MHI's consultant contends that there are other sources of PCBs at the Site "upstream of the confluence of Portage Creek and the Kalamazoo River. These sources include sediments in the vicinity of other operable units as well as sediments upstream of the Morrow Lake Dam . . ."

Region 5 believes it is unclear whether the PCB contamination at and near Morrow Lake Dam is more upstream than that at the Bryant Mill Pond Area, but Region 5 believes that the Bryant Mill Pond Area is the most upstream source of any PCB contamination likely to cause high levels of downstream contamination. Accordingly, the first sentence of this paragraph will be changed as indicated:

Due to the amount of PCB-contaminated paper residuals, soils and sediments at the Bryant Mill Pond Area, and the high concentrations of PCBs in those residuals, soils and sediments, Region 5 believes that the Bryant Mill Pond Area is the most important upstream source of PCB-contamination at the Site and to the Kalamazoo River.

3) Page 3, first partial paragraph:

MHI's consultant has indicated that the Bryant HRDL and the FRDLs contain only paper-making residual wastes. Accordingly, the following sentence will be modified as indicated:

The on-site containment units **to be utilized during the removal action** currently

contain PCB-contaminated paper residual **wastes** produced during Allied Paper's operation of its papermaking facilities.

4) Page 4, first partial paragraph:

The word "downstream" will be substituted for "later," so that the final sentence will read:

"Eighty miles **downstream**, the Kalamazoo River empties into Lake Michigan."

5) Page 5, first partial paragraph:

MHI's consultant has indicated that the former Type III Landfill located on the Allied Paper Operable Unit of the Site contains, in addition to paper residual wastes, general refuse. Accordingly, the following sentence will be added as indicated:

These areas all . . . Area. **(Additionally, the former Type III Landfill contains a substantial amount of general refuse.)** Two clarifiers . . .

6) Page 5, second and fourth full paragraphs:

Region 5 has learned that certain historical information contained in these paragraphs may be inaccurate. Accordingly the paragraphs will be modified as follows:

Allied Paper's operations at the Allied Paper Operable Unit of the Site consisted of two paper mills: the Monarch Mill and the Bryant Mill. Allied Paper operated the Monarch Mill starting in 1955 and installed a clarifier shortly thereafter. In 1954, Allied Paper's predecessor installed a clarifier at the Bryant Mill. Allied Paper became the owner of the Bryant Mill in 1956. Allied Paper also operated mills along Portage Creek both upstream and downstream of the Allied Paper Operable Unit.

For a period of . . .

Prior to the installation of the clarifiers, wastewater from the mills' operations was discharged directly into Portage Creek. After installation of the clarifiers, the supernatant was discharged either to Portage Creek or to the City of Kalamazoo wastewater treatment facility, while the settled residuals were placed in dewatering lagoons (the HRDLs and FRDLs). Dewatered residuals were removed from the lagoons and either used as fill on the property or placed in a landfill which Allied paper established in 1966 and used until 1988.

7) Page 7, second full paragraph:

MHI's consultant has pointed out that, since the Site was not listed on the NPL until 1990, it is

somewhat illogical to call it the "Superfund Site" as of 1986. Accordingly, the first sentence of the paragraph will be revised as follows:

In 1986, MDNR contractors completed a study of remedial feasibility for **the area of PCB-contamination which, four years later, would approximately comprise the Superfund Site.**

8) Page 9, second full paragraph:

MDEQ has advised that the Michigan Department of Community Health is the state agency which issued the fish advisory for the Kalamazoo River. Accordingly, the following sentence will be revised as indicated:

The waters of Portage Creek . . . Michigan. **Since 1977, the Michigan Department of Community Health** has placed a fish advisory/ban on the Kalamazoo River, due to elevated levels of PCBs in fish.

9) Page 10, first full paragraph:

MHI's consultant has questioned U.S. EPA's statements regarding the effect of PCBs from the Site on bald eagle reproduction. U.S. EPA's information regarding the effect of PCB contamination at the Site upon bald eagles is based on letters and information received from the U.S. Department of Interior's Fish and Wildlife Service, which will be added to the Administrative Record for the removal action. By letter dated April 9, 1993 from Charles Wooley, Field Supervisor of the Fish and Wildlife Service, to David Ullrich of Region 5, the Fish and Wildlife Service identified the bald eagle as among the endangered, threatened or candidate species that may occur within the Site. Furthermore, by letter dated December 21, 1994, David A. Best, a Fish and Wildlife Service Biologist, informed the MDNR and U.S. EPA that a bald eagle egg collected from a nest in the Ottawa Marsh, located downstream from the on-Site mills, contained PCBs at 102 ppm. Mr. Best also recently confirmed to Terese Van Donsel of Region 5 that reproduction of bald eagles in the area affected by PCB-contamination at the Site continues to be inadequate.

Nevertheless, Region 5 agrees that it is appropriate to modify the Action Memorandum to accurately identify the source of the information regarding the effect of PCB contamination on bald eagles. Accordingly, the last sentence of the paragraph will be modified as indicated:

According to information provided to U.S. EPA by the United States Department of Interior's Fish and Wildlife Service, bald eagles living in the area potentially affected by PCB contamination at and from the Site have not been able to reproduce successfully for at least the past seven years. A bald eagle egg collected in 1994 contained PCBs at 102 ppm.

10) Page 13, first partial paragraph:

MDEQ has advised that the fish advisory has been in effect since 1977. Accordingly, the first full sentence on page 13 will be revised as indicated:

A fish advisory has been in effect for portions of Portage Creek and the Kalamazoo River since approximately 1977.

11) Page 13, third full paragraph:

MDEQ has requested that the Action Memorandum note that wildlife living downstream from the Bryant Mill Pond Area may be affected by the upstream contamination. Accordingly, the following sentence will be modified as indicated:

As noted in the ecological risk assessment . . . wildlife living in the area **and/or downstream** is also at risk of direct contact and ingestion of PCBs.

12) Page 17, second full paragraph:

MDEQ noted that the sentence commencing "The proposed excavation and placement . . ." incorrectly suggests that placement of the contaminated waste will be within the Bryant Mill Pond Area. Accordingly, the sentence will be revised as indicated:

The proposed excavation and placement of contaminated paper residuals, soils and sediments **from** the Bryant Mill Pond Area **to the Bryant HRDL** is expected to mitigate threats posed to public health and the environment.

The conditions at this site meet the NCP §300.415(b)(2) criteria for a removal action and the CERCLA § 104(c) criteria for obligations to exceed \$2 million. OERR, OGC, and OECA have concurred on the attached Action Memorandum. Therefore, I recommend that you approve the Region 5 request for removal activities at the Site. Please indicate your decision by signing below.

Approved:

Timothy Fields, Jr.

Date:

6/5/98

Disapproved:

Date:

Attachment: Action Memorandum



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 17 1998

MEMORANDUM

REPLY TO THE ATTENTION OF

DATE:

SUBJECT: **ACTION MEMORANDUM** - Request for a Time-Critical Removal Action and a \$2 Million Exemption at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, Kalamazoo, Kalamazoo County, Michigan (Site ID# 059B)

FROM: David A. Ullrich *Michelle Ullrich*
Acting Regional Administrator

TO: Timothy Fields, Jr.
Acting Assistant Administrator
Office of Solid Waste and Emergency Response

THRU: Stephen D. Luftig, Director *Ernie Davis*
Office of Emergency and Remedial Response

I. PURPOSE

The purpose of this Memorandum is to request an exemption from the \$2 million statutory limit of 42 U.S.C. § 9604(c), and to obtain approval to expend up to \$7,500,000 for a time-critical removal action at a portion of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the "Site" or the "Superfund Site"), which is located in Kalamazoo and Allegan Counties, Michigan. The Memorandum also serves as the Action Memorandum for the proposed time-critical removal action, and therefore represents the Region 5 decision document establishing the need for and appropriate extent of the proposed response action.

The Site, designated as State Enforcement Lead by agreement between Region 5 and the State of Michigan, was listed on the National Priorities List (NPL) in 1990. Residual paper mill wastes, sediments and soils highly contaminated with polychlorinated biphenyls (PCBs) have come to be located on approximately 35 miles of an 80-mile stretch of the Kalamazoo

River. For purposes of remedial activity, the State has divided the Site into eight areas of concern and four operable units. Region 5 proposes to conduct a time-critical removal action at the Allied Paper Operable Unit of the Site and, with more particularity, that portion of the Allied Paper Operable Unit through which Portage Creek flows (see Figure 1, attached to and made a part of this Memorandum). This area, which has been designated the "Bryant Mill Pond Area" of the Allied Paper Operable Unit, is delineated on Figure 2, which is attached to and made a part of this Memorandum.¹

Region 5 believes that the Bryant Mill Pond Area is the most upstream source of PCB-contamination to the Kalamazoo River. Ultimately, PCB-contamination from the Kalamazoo River migrates to Lake Michigan. Through the proposed time-critical removal action, Region 5 seeks to mitigate the imminent and substantial threat to public health and the environment posed by the PCB-contaminated sediments, soils and residual paper pulp wastes in the Bryant Mill Pond Area. Region 5 proposes to abate the ongoing release and migration of PCBs to Portage Creek by removing approximately 85,000 cubic yards (cy) of PCB-contaminated sediment, soils, and residual paper pulp waste from the creek bed and floodplains located within the Bryant Mill Pond Area. Sampling and analysis of floodplain sediment in the Bryant Mill Pond Area have disclosed PCB-levels as high as 1,000 parts per million (ppm), with surface sediment concentrations exceeding 500 ppm.

¹ The Bryant Mill Pond Area can be described as the 790 contour interval, which is the approximate elevation of the crest of the Alcott Street Dam when in use.

Figure 3, attached to and made a part of this Memorandum, represents that portion of the Bryant Mill Pond Area at which PCB-contamination has been detected at levels requiring response action and, therefore, at which Region 5 anticipates conducting work. This area can be verbally described as follows: the Alcott Street Dam represents the northern boundary of the area. The eastern and western boundaries are the points where the floodplain and embankment meet to the east and west of Portage Creek, extending upstream to a point east of the SE corner of the Bryant HRDL.

Region 5 intends to temporarily divert Portage Creek from its normal flow and conduct, to the extent possible, a dry excavation of the Creek's sediment. Contaminated residuals, sediment and soils removed from the Bryant Mill Pond Area will be placed, at least temporarily, in existing containment units on the Allied Paper Operable Unit, located near the Bryant Mill Pond Area. These on-site containment units currently contain PCB-contaminated residuals and other wastes produced during Allied Paper's operation of its papermaking facilities. Region 5 will cover the materials stored in these units. As explained in detail below, depending primarily upon the outcome of current negotiations for a cashout agreement with the potentially responsible party for the Allied Paper Operable Unit, this cover will either be: (1) a geomembrane cap, temporarily installed to ensure that the PCB-contaminated materials present no threat to human health or the environment until such time as the final remedy for the Allied Paper Operable Unit is selected; or (2) materials suitable for use as a landfill venting layer.² Region 5 currently anticipates no off-site disposal of PCB-contaminated wastes.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID # MID006007306

A. Physical Description

The Allied Paper Operable Unit of the Site includes approximately

² The State of Michigan currently anticipates issuing a Proposed Plan for the Allied Paper Operable Unit sometime during the second half of 1998. The State's subsequent Record of Decision will select a final remedy for the on-site containment unit or units Region 5 intends to use for at least temporary storage of the Bryant Mill Pond Area wastes. In light of the fact that MDEQ has selected a "consolidation and capping" remedy at another operable unit of the Site, and is in the process of selecting a similar remedy for a second operable unit, Region 5 anticipates that the Record of Decision for the Allied Paper Operable Unit will select a consolidation and capping remedy for these containment areas.

51-acres within the city limits of Kalamazoo, Michigan. The property is located between Cork Street to the south and Alcott Street to the north, at the point where the Alcott Street Dam is located (see Figure 1). The Operable Unit, roughly, is bounded on the west by a Conrail Railroad line and on the east by the easternmost floodplain and earthen embankment of Portage Creek. Portage Creek flows through the Bryant Mill Pond Area of the Operable Unit. The Creek flows north through the Allied Paper Operable Unit, eventually flowing into the Kalamazoo River approximately 3-miles downstream. Eighty miles later, the Kalamazoo River empties into Lake Michigan.

As noted above, the Bryant Mill Pond Area is the focus of the proposed time-critical removal action. The mill pond was formed years ago when the Alcott Street Dam was in use, and served as a sedimentation basin for Allied Paper's mill operations. The Bryant Mill Pond Area represents approximately 20-to-22 acres of the larger 51-acre Allied Paper Operable Unit.

Because the dam is not used today, the mill pond is no longer underwater, except during major flood events. Portage Creek varies in width from approximately 15-to-70 feet, with a 25-year average discharge of 40 cubic feet per second. On either side of Portage Creek the floodplain areas extend up to approximately 300 feet in width. The west and east floodplains meet earthen embankments on either side of Portage Creek, rising approximately 10-to-15 feet, with varying slopes, to normal surrounding topography. The embankments act as flood control diking.

The floodplain areas primarily consist of a thin layer of soil and vegetation, overlying sediment and residual paper pulp waste. The residual paper pulp waste has the consistency of fine clay-like material. The depth of paper pulp waste is greatest at and near the northern downstream boundary of the Bryant Mill Pond Area (near the Alcott Street Dam), and decreases in depth upstream to the south.

The Bryant Mill Pond is only one of several areas of concern existing at the Allied Paper Operable Unit of the Site. Other identified contaminated areas on the Operable Unit include: (1) the on-site containment units or dewatering lagoons, generally known as the "Historic Residual Dewatering Lagoons" and "Former Residual Decanting Lagoons" or "HRDLs" and "FRDLs," respectively;

and (2) a former Type III Landfill. These areas all contain the same type of PCB-contaminated residual wastes found at the Bryant Mill Pond Area. Two clarifiers and several storage tanks and related piping are also located on-site. Sampling and analysis of the wastes already contained in the HRDLs and FRDLs indicate that the levels of PCB concentrations are as high or higher (on average) than the levels found in the Bryant Mill Pond sediment.

Residential homes are located along the southeastern portion of Portage Creek. Due to its municipal location, residential and commercial areas surround the entire Allied Paper Operable Unit. Access to the property is partially restricted by a chain link fence.

The population within a one-half mile radius of the Bryant Mill Pond area is approximately 1,782 persons. The population within a one mile radius is approximately 14,751 persons and of this 13.5% are considered minorities.

B. Site Description and Background

The Bryant Mill paper manufacturing facility in Kalamazoo, Michigan was operated by various companies, including Allied Paper, for approximately 94 years. Beginning in the 1930s, Allied Paper produced speciality papers, book papers and commercial printing papers at the facility. Allied Paper began discharging wastes to Portage Creek in 1937. Allied Paper also operated mills along Portage Creek both upstream and downstream of the Allied Paper Operable Unit.

For a period of almost 20 years (i.e. between the late 1950s until 1971), Allied Paper de-inked carbonless copy paper as part of its recycling operations. Carbonless copy paper contained hardened microcapsules of PCB-laden dyes. The process of de-inking and subsequent pulping of the recyclable carbonless copy paper released the PCB-contamination, and distributed PCBs throughout the paper recycling process. Most importantly for purposes of the proposed removal action, PCBs were released into various components of Allied Paper's waste stream.

Until the 1950s, Allied Paper discharged its process wastewater directly to Portage Creek. In the 1950s, Allied Paper constructed a primary clarifier and a series of dewatering

lagoons (the HRDLs and FRDLs). Allied Paper used these lagoons to help settle out process waste before discharge to Portage Creek.

Since the early 1950s, the State of Michigan has been concerned about discharges to the Kalamazoo River and its tributaries. In 1951, the Michigan Water Resources Commission (MWRC) stipulated to Allied Paper that "all freely settleable solids in wastes from deink pulping operations [shall] be kept out of the waters of the state." Michigan records show that violations of this stipulation occurred in 1953, 1956, 1957, 1961, 1964, 1967, and 1968, and that it was known that PCBs were most likely present in de-inking wastes as early as 1957. PCB contamination has been documented in river sediment, impoundments and depositional areas along the Kalamazoo River and tributaries since 1971.

In 1971, PCBs (primarily Aroclor 1242) were replaced by alkyl-biphenyl in the manufacture of carbonless paper products. According to historical information, Allied Paper may have discharged up to approximately 57 million pounds of paper residual to the Portage Creek and the Kalamazoo River in 1961 alone.

Historic photographs of the area now known as the Allied Paper Operable Unit indicate that the Bryant Mill Pond elevation (water level) was significantly lowered in 1976 by partially opening the controlling sluice gate-type dam. Because of the drawdown, historical sediment deposition was exposed. During high flow events, usually in the Spring, partial reimpoundment of the Bryant Mill Pond area may occur.

A variety of Michigan State agencies have conducted many investigative studies of the entire Superfund Site, beginning with the MWRC studies of the early 1970s and continuing during the following decade with studies conducted by the Michigan Department of Natural Resources (MDNR, now the Michigan Department of Environmental Quality or MDEQ). MWRC's studies were the first to conclude that fish collected from the Kalamazoo River contained significant concentrations of PCBs. The sediment sample data base from these investigations established that the highest concentrations of PCBs were in the Bryant Mill Pond Area. Surface sediment samples collected from lower Bryant Mill Pond

(i.e. near the dam) contained PCB concentrations above 500 ppm. In 1984, a sediment sample collected 1,600 feet downstream of Cork Street, within the Bryant Mill Pond Area, had a concentration of 898 ppm. The MDNR contractor reported that a significant number of samples with PCB concentrations above the U.S. EPA "action level" of 50 ppm existed, and that the overall average concentration of PCBs found in surface samples for these years was greater than 175 ppm.

In 1983, MDNR designated the Site a Michigan Environmental Response Act (Act 307) Site. Because the Kalamazoo River is a major source of PCBs released to Lake Michigan and the Great Lakes ecosystem, the International Joint Commission of the Great Lakes identified a portion of the Kalamazoo River as an area of concern in 1985.

In 1986, MDNR contractors completed a study of remedial feasibility for the Superfund Site. Based upon this study, MDNR recommended that a remedial action take place at the former Bryant Mill Pond. MDNR determined that remediation of the former Bryant Mill Pond would have the most significant effect in reducing the public health threat from PCBs at the Site and would decrease downstream PCB concentrations in fish. Despite this recommendation, conditions at the Bryant Mill Pond Area have gone unaddressed.

In 1990, the Site was placed on U.S. EPA's NPL and, as noted above, became a State Enforcement Lead Site. MDNR negotiated an Administrative Order by Consent (AOC) with three of the potentially responsible parties (PRPs) for the Site and, for purposes of administering the Site, divided it into eight areas of concern and four operable units. The State-negotiated AOC required the PRPs to conduct a Remedial Investigation/Feasibility Study (RI/FS) of the NPL site. Two of the Operable Unit RI/FSs were completed last year. The RI/FS for the Allied Paper Operable Unit is not yet complete.

Field work conducted on behalf of the PRP for the Allied Paper Operable Unit has been performed primarily by Blasland, Bouck & Lee (BB&L), an environmental consulting firm. Extensive sampling and site characterization studies have been performed by BB&L since entry of the AOC. In a recent RI/FS related report dated August 1997, BB&L calculated that approximately 83,000 cy of

contaminated sediment and residual waste existed within the Bryant Mill Pond Area. Calculations performed by Region 5 and/or the United States Army Corps of Engineers derive a similar estimate of the volume of contaminated waste.

C. Other Actions to Date

In 1990, Allied Paper erected a fence around a portion of its property and elsewhere as part of a negotiated AOC with U.S. EPA. In assessing the appropriate location for the fence, Region 5 collected 15 surface soil samples from various floodplain locations within the Bryant Mill Pond Area. PCB analyses revealed concentrations ranging from non-detect to 210 ppm.

On May 8, 1997, at the request of the MDEQ, Region 5 and contractors met at the Bryant Mill Pond Area to evaluate whether conditions existed to justify a potential removal action. Six samples were collected from Portage Creek sediment and surrounding floodplain areas within the Bryant Mill Pond Area. Samples were collected from just south of the Alcott Street Dam to approximately 300-feet upstream. The sampled media consisted of a gray, clay-like material, which represents historic residual paper pulp waste deposition. Chemical analyses for total PCBs of the six samples ranged from 2.0 ppm to 143.8 ppm. BB&L split these same six samples with Region 5 and, upon chemical analysis, detected PCBs ranging from .98 ppm to 410 ppm. During the visit, Region 5 observed residual paper pulp waste on the banks of the Portage Creek eroding into the waters of Portage Creek.

On August 11, 1997, Region 5, its contractors and PRP-representatives again met at the Bryant Mill Pond Area to perform a reconnaissance of the area, including direct visual inspection of the Portage Creek stream bed, banks and floodplain areas.

All parties observed that creek bank sediment and gray clay-like residual paper wastes continued to erode and migrate into Portage Creek when exposed to the active stream flow. Knowing that much of the creek bank and outlying floodplain is contaminated with PCBs, Region 5 concluded that there was an ongoing release of a hazardous substance, as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended (CERCLA).

III. THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The conditions present at the Site, and specifically at the Bryant Mill Pond Area of the Allied Paper Operable Unit, constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP).³ These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants:

This factor is present at the Bryant Mill Pond Area due to the existence of contaminated sediment with PCB concentrations as high as 1,000 ppm, which exists in an uncontrolled manner, potentially allowing direct access by surrounding human and animal populations. The Bryant Mill Pond Area is located in an urban setting, with a mixed industrial and residential population base. Based on evidence of abandoned deer blinds and trespassing, it appears that the Bryant Mill Pond Area has been or is being utilized illegally as a recreational area. The waters of Portage Creek and associated floodplain flow into the Kalamazoo River, which ultimately flows into Lake Michigan. Currently, the MDNR has placed a fish advisory/ban on the Kalamazoo River, due to elevated levels of PCBs in fish. The high probability of continued releases of PCBs creates a direct contact threat to the public and wildlife. Continued releases of

³ At 40 C.F.R. § 300.415(e)(6), the NCP specifically provides that, as a general rule, "[e]xcavation, consolidation, or removal of highly contaminated soils from drainage or other areas -- where such actions will reduce the spread or direct contact with, the contamination" is an appropriate removal action. As explained at more length below, Region 5's proposed removal action involves the excavation of highly contaminated soils and sediments from a drainage area. Accordingly, a regulatory presumption of appropriateness exists for the type of response action Region 5 proposes to conduct at the Bryant Mill Pond Area.

PCBs ultimately affects water quality, resulting in exposure of freshwater organisms and higher food chain biota.

In 1993 MDNR commenced work on an ecological risk assessment for the Site, which was funded by Region 5. A final draft ecological risk assessment has been prepared and is currently being reviewed by MDEQ. The final draft risk assessment concluded that PCB-contamination at the Site presents a high to moderate ecological risk for eight animal species, particularly those whose diet consists primarily of fish or other prey residing in contaminated floodplain areas. Table A-1 of the study lists six pages of endangered vertebrates, invertebrates and vascular plant communities potentially affected by the PCB-contamination at the Site. Moreover, the ecological risk assessment concluded that risks may be more significant for those animals living in and near Portage Creek. Bald eagles in the area have not been able to reproduce successfully for at least the past seven years.

b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate:

As noted, high concentrations of PCBs at or near the surface of the Bryant Mill Pond Area have been exhaustively documented. Region 5 representatives have directly observed significant and recent erosion of contaminated stream bank sediment. Deposited paper waste, sediment and peat layers are spalling and sloughing into Portage Creek due to undercutting of the Creek's banks by the active stream flow. The contaminated material is transported downstream in the water column as it is mechanically broken down in the action of flowing water. The Bryant Mill Pond Area is situated within a 10 and 100 year flood plain: flooding in the area significantly increases both the likelihood and rate of erosion into Portage Creek, migration to the Kalamazoo River and, ultimately, to Lake Michigan.

c. Actual or potential contamination of drinking water supplies or sensitive ecosystems:

As noted at various points above, the Portage Creek, a tributary to the Kalamazoo River, flows through the Allied Paper Operable Unit. The Kalamazoo River flows into Lake Michigan, one of the Great Lakes, which is considered a sensitive ecosystem. Releases

to Lake Michigan pose a threat to human health and the environment through bioaccumulation of PCBs in the food chain.

Region 5 currently believes that the Kalamazoo River is the second most significant water source of PCBs to Lake Michigan. The Region also believes that the Bryant Mill Pond Area is the most upstream source of PCB-contamination to the Kalamazoo River.

d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released:

In many years Portage Creek is subjected to extreme weather conditions during the winter and spring months, which significantly increases the threat of major releases of PCB-contaminated sediment downstream. Ice chunks broken up in late winter flow downstream and scour the creek banks. Heavy spring rains increase both water volume and velocity in Portage Creek, again creating a scouring effect. This increase in scouring, water volume, velocity, and load could cause an increase in the downstream transportation of contaminated sediments in Portage Creek, the Kalamazoo River and ultimately Lake Michigan.

e. The unavailability of other appropriate federal or state response mechanisms to respond to the release:

MDEQ has fully supported Region 5's efforts to mitigate the threats to public health, welfare, and the environment at the Bryant Mill Pond Area as a time-critical removal action. Region 5 understands that MDEQ does not have the resources to conduct a response action itself. MDEQ has recently indicated that it concurs with the proposed time-critical response action and the performance standards established in this Memorandum, and will provide Region 5 with a letter stating such concurrence in the near future.

IV. ENDANGERMENT DETERMINATION

Given the conditions at the Bryant Mill Pond Area of the Site, the nature of the hazardous substances there, and the potential exposure pathways to nearby populations as described in Sections II and III above, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the

response actions selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare or the environment.

PCBs are hazardous substances as defined by Section 101(14) of CERCLA, and are regulated pursuant to 40 C.F.R. Part 761 of the Toxic Substance Control Act (TSCA). U.S. EPA has determined that PCBs are probable human carcinogens.

V. EXEMPTION FROM STATUTORY LIMITS

Consistent with 40 C.F.R. § 300.415(b)(5)(i), Region 5 has determined that an exemption to the \$2 million statutory limit for removal actions is warranted for the following reasons:

- 1. There is an immediate risk to public health or welfare or the environment.** PCBs are hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are regulated pursuant to TSCA. PCBs are also listed as a hazardous substance under Section 311(b)(2) of the Clean Water Act, as set forth in 40 C.F.R. § 116.4 Table A.

The Allied Paper Operable Unit is the most upstream of all the operable units comprising the Superfund Site. The Bryant Mill Pond Area has been identified as having the highest average PCB sediment levels in a single concentrated area of the Site. It has also been identified as that portion of the Superfund Site which presents the greatest risk to ecological receptors. Region 5 has concluded that ongoing releases of PCBs to Portage Creek from the Bryant Mill Pond Area significantly contributes to downstream migration of PCBs to the Portage Creek, Kalamazoo River and ultimately Lake Michigan.

As noted above, the draft final ecological risk assessment provides a detailed review of the potential ecological impacts caused by the presence and release of PCBs into Portage Creek and the Kalamazoo River environs. The report presents an analysis of uptake and transmission of PCBs via release from sediments into surface and groundwater and into the food chain/food web. The draft final report concludes that there is an ongoing release of PCBs to the environment from the Superfund Site, which includes the Allied Paper Operable Unit. The report identifies Portage Creek as presenting particular risk to at least five animal

species. A fish advisory has been in effect for portions of Portage Creek and the Kalamazoo River since approximately 1986. PCBs have been detected in fish samples above the Michigan threshold levels in many studies conducted over the years. PCBs released from the Bryant Mill Pond Area could exacerbate the current level of PCB concentrations and contribute to bioaccumulative effects in fish and other species downstream.

2. Continued response actions are immediately required to prevent, limit, or mitigate an emergency. It is not likely that remedial actions will commence at the Allied Paper Operable Unit until, at the earliest, late 1999 or 2000. As demonstrated above, response actions are immediately required to prevent the ongoing release of PCBs from the Bryant Mill Pond Area to Portage Creek, and thereby to prevent downstream migration and further sediment contamination. Paper residual wastes continue to erode in significant quantities into Portage Creek. It has been well established that eroding creek banks and associated flood plains contain PCB concentrations exceeding 500 ppm at or near the surface. PCB concentrations as high as 1,000 ppm have been detected at a depth of one-to-two feet in exposed, saturated floodplain areas.

The mass of PCBs contained in the exposed sediments of the Bryant Mill Pond floodplain area has been estimated to be between 22,000 to 36,000 pounds, while the Portage Creek channel itself may contain 260 pounds of PCBs.

The PCB contamination at the Bryant Mill Pond Area poses a threat to people trespassing into the area, who may come into direct contact with the high concentrations of surface level PCBs in soil and sediment. As noted in the ecological risk assessment discussed above, wildlife living in the area is also at risk of direct contact and ingestion of PCBs. Wildlife in the area has begun to experience reproductive difficulties associated with the uptake of PCBs.

3. Assistance will not otherwise be provided on a timely basis. Neither Michigan nor county governments have the requisite access or funds necessary to undertake a removal action such as the one described in this Memorandum. An ongoing threat to public health, welfare and the environment continues due to this lack of funding.

A exemption from the \$2 million limit is also justifiable under the criteria of 40 C.F.R. § 300.415(b)(5)(ii), which provides that the exemption is appropriate if "[c]ontinued response action is otherwise appropriate and consistent with the remedial action to be taken." The final remedial action for the Allied Paper Operable Unit will address all of the areas with PCB-contaminated waste, including any HRDL or FRDL Region 5 uses for storage of the residuals, sediments and soils removed from the Bryant Mill Pond Area. Region 5's removal action will assist in the consolidation of these wastes, and should make the final disposition of these wastes more efficient and less costly.

V. PROPOSED ACTION AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

Excavation and containment of the PCB-contaminated sediment and residual paper waste will mitigate the public health threat posed by direct human and wildlife contact. Excavation and containment will also mitigate the threats posed to aquatic biota and piscivorous wildlife threatened by the ongoing release of PCBs to the Portage Creek and Kalamazoo River.

Region 5 intends to undertake the following actions to mitigate threats posed by the presence of hazardous substances within the Bryant Mill Pond Area of the Allied Paper Operable Unit:

- a. Develop and implement a Health and Safety Plan in accordance with all appropriate regulations. A Health and Safety plan will be reviewed and approved by Region 5.
- b. Develop and implement an air monitoring program. This includes both work in the Bryant Mill Pond Area and in the containment areas (Bryant HRDL and FRDL).
- c. Clear and grub the entire excavation area. Clear and grub and regrade/stabilize the Bryant HRDL and, if necessary, a portion of the Bryant FRDL for use as dewatering cells and containment of contaminated sediment.

- d. Construct new haul roads to transport contaminated sediment from the Bryant Mill Pond Area to the Bryant HRDL and, if necessary, the Bryant FRDL. Refurbish existing roads as necessary.
- e. Develop an appropriate plan to dewater, if necessary, portions of the Bryant Mill Pond Area where excavation will take place. Various coffer dam systems will be utilized to help divert Portage Creek during excavation. Silt curtains and fences or similar devices will be used to help control resuspension of sediment during site operations.
- f. Excavate all soils, sediment and/or paper residual waste within the specified Bryant Mill Pond Area, including creek bed sediment, contaminated with PCBs at levels exceeding 10 ppm, the performance standard for this removal action (estimated to be approximately 85,000 cubic yards). The performance standard goal for the removal action will be 1 ppm. Excavation depths, according to analytical results, vary from six-feet to one-foot.
- g. Transport contaminated residuals, soils and sediment from the excavation areas to the Bryant HRDL (and, if necessary, the Bryant FRDL). Dewater saturated material as necessary.
- h. Cover the PCB-contaminated residuals, soils and sediment in a manner that Region 5 believes will be protective of human health and the environment until a final remedy for the on-site containment units at the Allied Paper Operable Unit is selected by MDEQ and implemented accordingly. The manner in which the PCB-contaminated materials will be graded and covered will depend primarily upon: (1) the outcome of negotiations for a cashout agreement currently underway with the PRP for the Allied Paper Operable Unit, pursuant to which the removal action would be funded by the PRP; (2) whether, subsequent to any excavation/dredging but prior to installation of any cover materials, MDEQ appears likely to select a consolidation and capping remedy for the Bryant HRDL; and (3) whether, prior to installation of any cover materials, Region 5 has made a decision regarding the appropriateness of a waiver from certain landfill requirements of TSCA for the Bryant HRDL. Provided that, prior to installation of any cover materials: (1) the

cashout agreement has become final; (2) MDEQ appears likely to select a consolidation and capping remedy for the Bryant HRDL; (3) Region 5 has made no decision that a TSCA waiver is inappropriate for the Bryant HRDL or Region 5 has made a determination that a TSCA waiver is appropriate; and (4) Region 5 determines that the PRP for the Allied Paper Operable Unit will be able to install an appropriate cap over the venting layer in sufficient time to ensure protectiveness of human health and the environment, then Region 5 will: (1) install a cover at the Bryant HRDL suitable for use as a venting layer, and (2) provide the PRP for the Allied Paper Operable Unit with a geomembrane cap for installation by that party over the venting layer, and over any additional layers, as required by MDEQ in the final Record of Decision for the Allied Paper Operable Unit. In the event that: (1) the cashout agreement has not become final; or (2) MDEQ appears unlikely to select a consolidation and capping remedy for the HRDL; or (3) Region 5 has made a decision that a TSCA waiver is inappropriate for the Bryant HRDL; or (4) Region 5 determines that, subsequent to installation of a venting layer, the PRP will not be able to install an appropriate cap over the venting layer in sufficient time to ensure protectiveness of human health and the environment, then Region 5 will install a geomembrane cap over the materials in a manner that is temporary, but sufficiently secure to ensure protectiveness of human health and the environment until such time that a final remedy is implemented.

- i. Standing water and/or groundwater may be encountered during the excavation activities. Water accumulated during dewatering activities will be treated on-site, analyzed for PCBs to meet discharge limits and discharged to either the local sanitary district or back to Portage Creek.
- j. Backfill areas of excavation and revegetate and restore as necessary.
- k. Develop and implement a confirmation sampling plan during the excavation phase of the project. Confirmatory samples shall be taken prior to backfilling. In the event that the confirmatory sampling demonstrates that the performance standard of 10 ppm has not been met, then additional

excavation and confirmation sampling will be required. In the event that the confirmatory sampling demonstrates that the performance standard goal of 1 ppm, has not been met, then Region 5 will evaluate whether additional excavation and confirmatory sampling is appropriate under the circumstances presented at the time and place the sample result is obtained.

Onsite removal activities will require approximately 250 working days to complete, which Region 5 considers to be one full construction season. Region 5 is currently evaluating entering into an Interagency Agreement with the U.S. Army Corps of Engineers to perform the removal action.

The On-Scene Coordinator (OSC) has begun planning for the provision of post-removal site control, consistent with the provisions of Section 300.415(1) of the NCP. The nature of the removal is, however, expected to minimize the need for post-removal site control, at least in the Bryant Mill Pond Area. The proposed excavation and placement of contaminated paper residuals, soils and sediment in the Bryant Mill Pond Area is expected to mitigate threats posed to public health and the environment.

The response actions described in this Memorandum directly address actual or threatened releases of hazardous substances, pollutants, or contaminants at the facility which may pose an imminent and substantial endangerment to public health and the environment. These response actions do not impose a burden on affected property disproportionate to the extent to which that property contributes to the conditions being addressed.

2. Contribution to Remedial Performance

As stated earlier, the Superfund Site is a State Enforcement Lead site. As a result, MDEQ has primary responsibility for the remedial action at the Site. The Allied Paper Operable Unit is still in the RI/FS stage of the remedial process. As noted above, remedial action at this Operable Unit is not expected to commence until late 1999 or 2000. As also noted previously, MDEQ has recently indicated that it will send Region 5 a letter documenting its concurrence with the proposed response action and the performance standard and goal set forth in this Memorandum.

Region 5's proposed action will abate an imminent and substantial threat to public health and the environment at the Bryant Mill Pond Area, and will also be consistent with what Region 5 currently anticipates will be the final remedial action for the Operable Unit. As noted above, Region 5's removal action will help to consolidate the wastes at the Allied Paper Operable Unit, thereby making the ultimate disposition of those wastes more efficient and less costly. Region 5 currently intends to place a cover on any HRDL or FRDL it uses in the course of the removal action. In the event that MDEQ selects a capping remedy for the containment areas, the cover for the Bryant HRDL should be consistent with any applicable or relevant and appropriate requirements established by MDEQ and/or Region 5.

3. Applicable or Relevant and Appropriate Requirements (ARARS)

All applicable or relevant and appropriate requirements (ARARS) will be complied with to the extent practicable. On March 11, 1998, Region 5 sent a letter to Scott Cornelius of MDEQ requesting state ARARS for the proposed removal action. State ARARS will be complied with to the extent practicable.

Because the removal action will not include permanent disposal of the PCB-contaminated material, disposal requirements of TSCA will not be triggered and will not be considered ARARS. Region 5 is aware that the Bryant HRDL and FRDL (into which contaminated material from the Bryant Mill Pond will be placed, much of it with PCB-concentrations at or above 50 ppm) do not satisfy all of the landfill requirements of TSCA. The Region is also aware that, for at least one other operable unit at the Superfund Site, MDEQ has requested, and Region 5 has granted, a TSCA waiver for existing on-site disposal areas. Region 5 believes that, in the event MDEQ selects a consolidation and capping remedy for any of the containment units at the Allied Paper Operable Unit (including the Bryant HRDL and FRDL), the State agency may seek another TSCA waiver. Region 5 has not begun to evaluate whether such a waiver would be appropriate at the Allied Paper Operable Unit, but has committed to ensuring coordination between the Superfund and TSCA programs of Region 5.

The Federal Clean Water Act, National Pollution Discharge Elimination System (NPDES) program requires a permit for direct

discharge to surface water. States authorized to administer an equivalent program, such as Michigan, establish discharge standards. Discharge from a CERCLA site to surface water bodies must meet substantive requirements of the permitting process, but a permit is not required. Treated water from project operations discharged back to Portage Creek from sediment dewatering will meet substantive discharge standards established by MDEQ in accordance with Clean Water Act requirements.

If off-site disposal is necessary for wastes other than the excavated material, wastes will be transported to an acceptable RCRA and/or TSCA/CERCLA treatment, storage and disposal facility pursuant to the U.S. EPA Off-Site Rule.

B. Estimated Costs

EXTRAMURAL COSTS

Cleanup Contractor Costs	\$5,525,000
Contingency (10%)	<u>552,500</u>
Subtotal	\$6,077,500
 Total START	 <u>50,000</u>
 Extramural Subtotal	 \$6,127,500
 Extramural Contingency (20% of Extramural Subtotal, rounded to the nearest thousand)	 <u>\$1,225,500</u>
 TOTAL, EXTRAMURAL COSTS	 \$7,353,000

INTRAMURAL COSTS

U.S. EPA Direct Costs [\$30 X (1,500 Regional Hrs. + 150 HQ Hrs.)]	\$ 49,500
U.S. EPA Indirect Costs (\$65 X 1,500 Regional Hours)	<u>\$ 97,500</u>
 TOTAL, INTRAMURAL COSTS:	 \$ 147,000
 TOTAL REMOVAL PROJECT CEILING ESTIMATE	 \$7,500,000

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed or non-action may result in further contamination of Portage Creek, the Kalamazoo River and their environs due to an ongoing release of PCBs from the Bryant Mill Pond Area, thereby threatening the environment and exacerbating the levels of PCBs in aquatic biota (including fish). Delayed action also increases the likelihood that human or wildlife populations currently gaining access to the area will come into direct contact with PCB-contaminated residuals, soils or sediments. Because PCBs are bioaccumulative, intermittent trespassers exposed to PCBs in the Bryant Mill Pond Area may suffer increased body burdens of PCBs. Bioaccumulative effects may also be seen in upper trophic level ecological receptors from ingestion of contaminated prey.

VII. OUTSTANDING POLICY ISSUES

See Enforcement Addendum.

VIII. ENFORCEMENT

For administrative purposes, information concerning confidential enforcement strategy for this site is contained in the Enforcement Addendum.

IX. RECOMMENDATION

This decision document represents the selected time-critical removal action for the Allied Paper/Portage Creek/Kalamazoo River Superfund Site located in Allegan and Kalamazoo Counties, Michigan. More particularly, the time-critical removal action will take place on the Bryant Mill Pond Area of the Allied Paper Operable Unit of the Site. The removal action has been developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based upon the Administrative Record for this removal action. Conditions at the Bryant Mill Pond Area of the Site meet the criteria of Section 300.415(b)(2) of the NCP for a removal action, as well as those of Section 104(c) of CERCLA regarding emergency exemption from the \$2 million cap on removal actions. The total project ceiling, if

approved, will be \$7,500,000. Of this, an estimated \$7,303,000 may be used for cleanup contractor costs. You may indicate your decision by signing below.

APPROVE: _____ DATE: _____
Acting Assistant Administrator
Office of Solid Waste and Emergency Response

DISAPPROVE: _____ DATE: _____
Acting Assistant Administrator
Office of Solid Waste and Emergency Response

Figures: 1. Site Location Map
 2. Extent of "Bryant Mill Pond Area" Map
 3. Extent of Contamination at Bryant Mill Pond

Attachments: A. Confidential Enforcement Addendum
 B. Administrative Record

cc: K. Mold, U.S. EPA 5202G
 D. Henne, U.S. Department of the Interior, w/o Enf. Addendum
 S. Cornelius, MDEQ, Superfund Coordinator, w/o Enf.
 Attachment
 R. Harding, MDEQ, Director, w/o Enf. Attachment
 F. Kelley, Michigan Department of Attorney General, Attorney
 General, w/o Enf. Attachment



Quadrangle Location



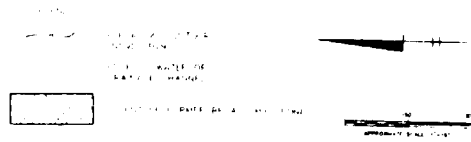
Michigan



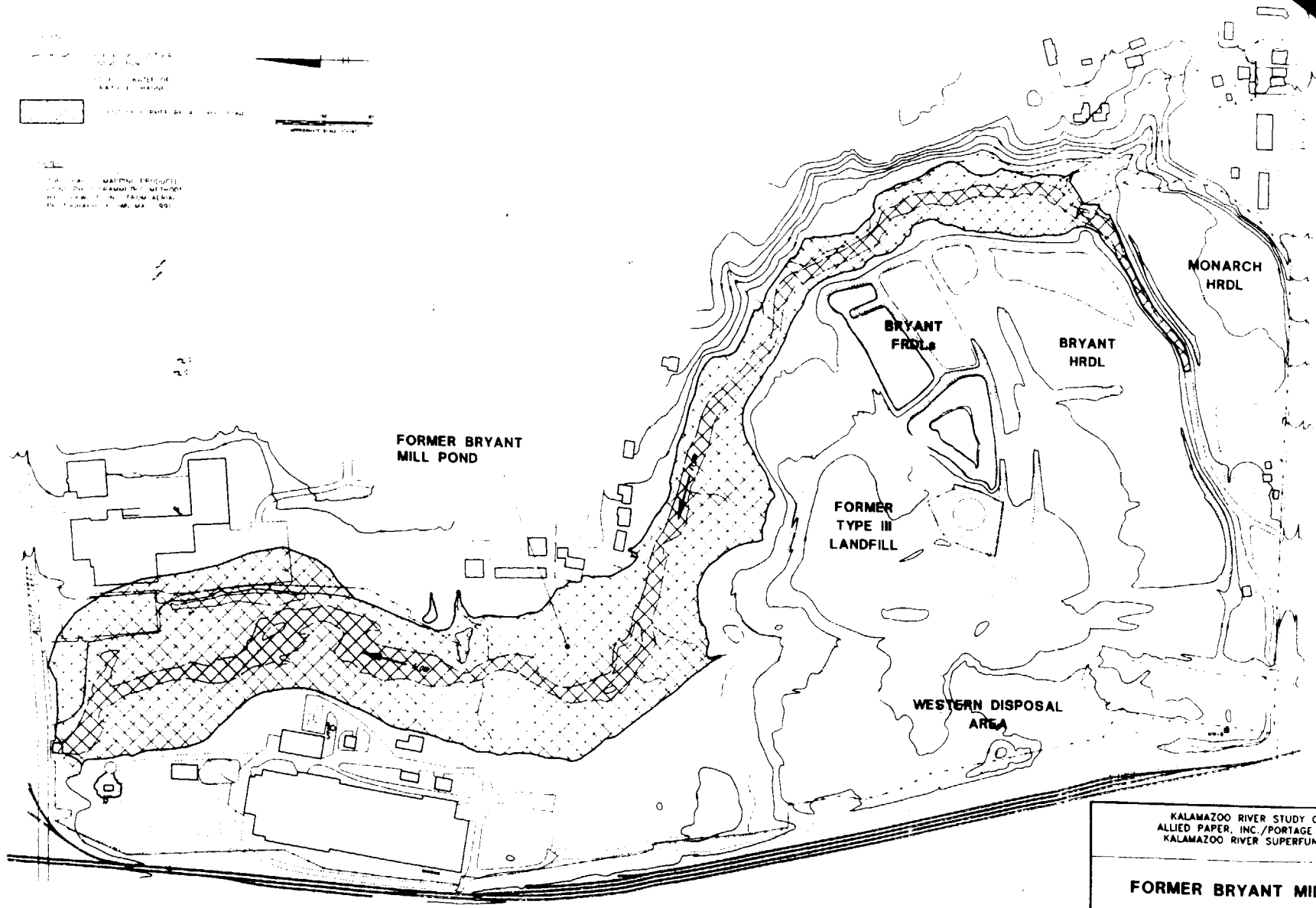
U.S. Environmental Protection Agency Region V

Emergency and Enforcement Response Branch
77 West Jackson Boulevard
Chicago, IL 60604

TITLE	Site Location Map	FIGURE #	1
SITE	Allied Paper	SCALE	1:24,000
CITY	Kalamazoo	STATE	Michigan
SOURCE	USGS 7.5 minute series, Kalamazoo and Portage Quadrangles	SITE ID#	059B
		DATE	1997
		REVISED	1973



THIS MAP WAS PREPARED FOR THE
KALAMAZOO RIVER STUDY GROUP
BY BBL, INC. IN 1980.



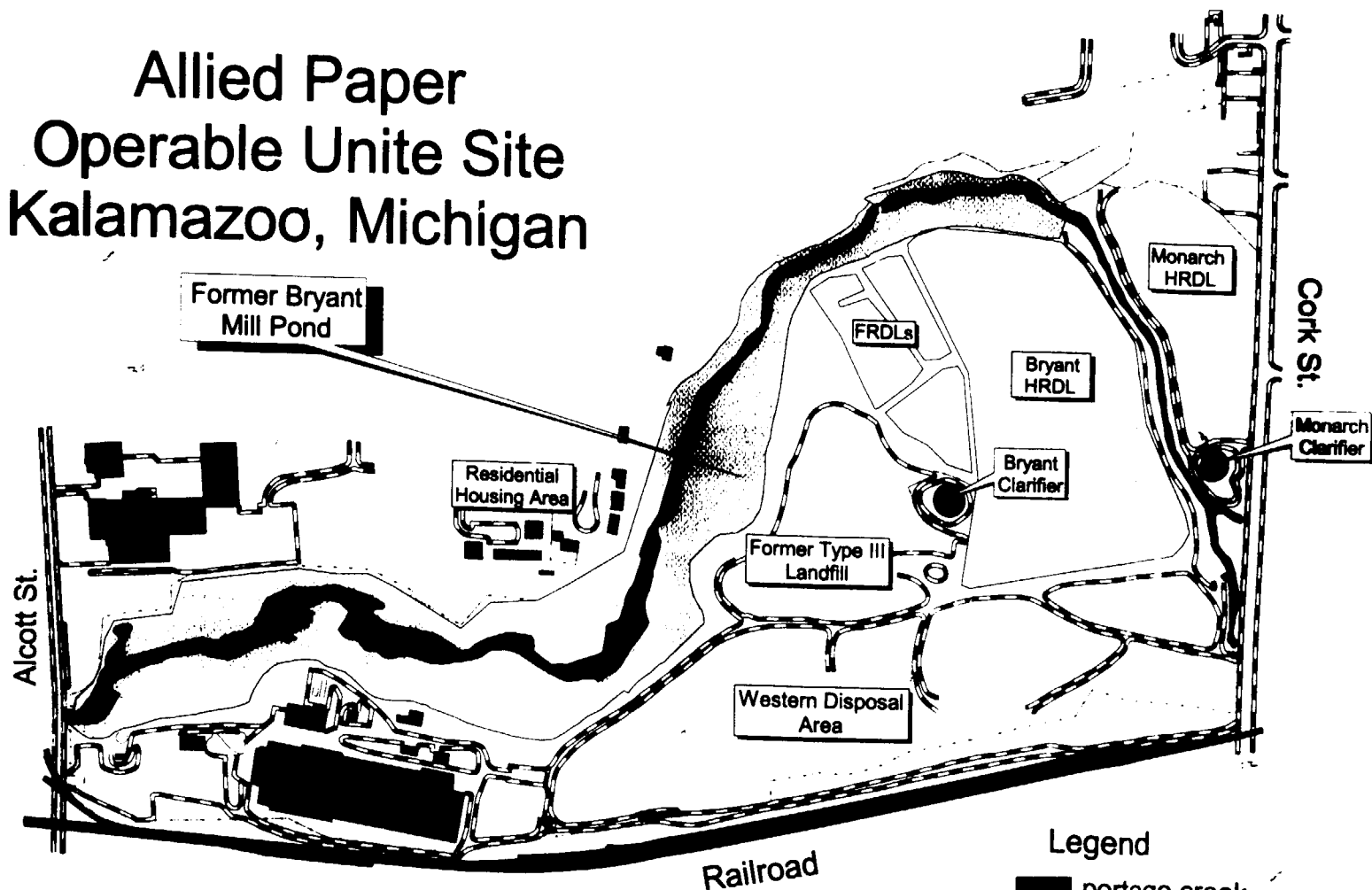
KALAMAZOO RIVER STUDY GROUP
ALLIED PAPER, INC./PORTAGE CREEK/
KALAMAZOO RIVER SUPERFUND SITE

FORMER BRYANT MILL POND

BBL BLASLAND, BOUCK & LEE, INC.
engineers & scientists

FIGURE
2

Allied Paper Operable Unite Site Kalamazoo, Michigan



USEPA Superfund Division
77 West Jackson Blvd.
Chicago, IL. 60604



Legend

- portage creek
- extent of former Bryant Mill Pond
- lagoons
- clarifiers
- roadways
- fencing

FIGURE 3

**ATTACHMENT A
ATTORNEY WORK PRODUCT
ENFORCEMENT ADDENDUM
3 PAGES**

REDACTED

NOT RELEVANT TO THE SELECTION OF THE REMOVAL ACTION

ATTACHMENT B

ADMINISTRATIVE RECORD
FOR
ALLIED PAPER SITE

Kalamazoo, Michigan

ADMINISTRATIVE RECORD
FOR
ALLIED PAPER

Kalamazoo, Michigan

December 2, 1991

<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
07/13/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Cornelius, S., MDNR	Fence Status Report	2
07/26/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Cisneros, J., U.S. EPA	Letter on Fence Specifications	1
09/19/90	Steadman, P., U.S. EPA	Cornelius, S., MDNR	Generalized Sketch of Citizens' Alter- native to Fencing	2
09/30/90	Weston, Inc.	U.S. EPA	Site Assessment	17
10/03/90	Truchan, J., MDNR	Bowden, R., U.S. EPA	Letter Regarding Restriction of Access/Attached Correspondence Dated 6/22/90	4
10/15/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Cornelius, S., MDNR	Letter Regarding Residential Fence Specifications	2
10/22/90	DeLach, D., Homecrest Circle Assoc.	Steadman, P., U.S. EPA	Request for a Fence Specification Vari- ance	3
11/01/90	Ullrich, D., U.S. EPA	Breslow, S., H.M. Holdings Co.	Administrative Order by Consent	14
11/06/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Steadman, P., U.S. EPA	Fence Location	1
12/21/90	Steadman, P., U.S. EPA	Barnette, J., U.S. EPA	Progress Report, Along with Exhibit G of the Work Plan	2

12/26/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Steadman, P., U.S. EPA	Work Plan For Fencing	49
01/22/91	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	McGregor, R., and Wilson, H.	Letter Regarding Fence Installation	1
02/22/91	Steadman, P., U.S. EPA	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Letter Regarding Barbed Wire Fencing	3
03/01/91	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Steadman, P., U.S. EPA	Final Report Under the Administrative Order	5
03/06/91	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Steadman, P., U.S. EPA	February 22 EPA Assessment of Fence Installation	4
05/02/91	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Adams, L., U.S. EPA	Letter Regarding Residential Fence	2
05/13/91	Steadman, P., O'Riordan, D., U.S. EPA	Baker, M., McGregor, R., Wolfe, R., Van Gorder, W.	Letter Regarding Adding Barbed Wire to Fence	4
07/09/91	Hanisch, M., Varnum, Rid- dering, Schmidt & Howlett	Adams, L., U.S. EPA	Additional Copy of Final Report Under the Administrative Order	8
07/25/91	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Steadman, P., U.S. EPA	Supplement to the Final Report	3
10/07/91	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Adams, L., U.S. EPA	Letter Regarding Fence Relocation	3
10/08/91	Steadman, P., U.S. EPA	Halbeisen, A.,	Letter Regarding WW Engineering Fenceline Relocation and Science	3

10/25/91 Steadman, P., Breslow, S., Allied Paper Com- 2
U.S. EPA H.M. Holdings, pany's Response to
and DeWitt, Administrative Order
J., Varnum,
Riddering, Sch-
midt & Howlett

UPDATE

March 18, 1992

03/03/92 Patarcity, U.S. EPA Correspondence 3
J., HM Holding, With Copy of
Inc. Check for Reimburse-
ment of Oversight
Costs

AR

U.S. ENVIRONMENTAL PROTECTION AGENCY

ADMINISTRATIVE RECORD
FOR
ALLIED PAPER/PORTAGE CREEK/KALAMAZOO RIVER SITE
KALAMAZOO, MICHIGANUPDATE #2
APRIL 2, 1998

NO.	DATE	AUTHOR	RECIPIENT	TITLE/DESCRIPTION	PAGES
1	02/00/86	Wilkins & Wheaton Testing Laboratory, Inc.		Program for Effective Residuals Management for the Allied Paper, Inc. Solid Waste Disposal Facility for Residual Disposal	179
2	09/02/88	Peterson, G., Limno-Tech, Inc.	DeWitt, J., Limno-Tech, Inc.	Memorandum re: 1988 Portage Creek Sediment Survey--Summary of PCB Distribution (DRAFT)	37
3	09/02/88	Peterson, G., Limno-Tech, Inc.	DeWitt, J., Limno-Tech, Inc.	Memorandum re: 1988 Portage Creek Survey Chain of Custody Records and Field Notes (DRAFT)	76
4	09/02/88	Peterson, G., Limno-Tech, Inc.	DeWitt, J., Limno-Tech, Inc.	Memorandum re: Bryant Pond Soil Characteristic Data (DRAFT)	106
5	09/02/88	Peterson, G., Limno-Tech, Inc.	DeWitt, J., Limno-Tech, Inc.	Memorandum re: Bryant Pond Volume Estimates for Sediment with PCB Concentrations Exceeding 5, 10, 25, 50 and 100 mg/kg	16
6	09/02/88	Peterson, G., Limno-Tech, Inc.	DeWitt, J., Limno-Tech, Inc.	Memorandum re: Summary of Bryant Pond Sediment Sampling Locations and Elevations	9
7	02/15/90	Limno-Tech, Inc.	Allied Paper, Inc.; et al.	Results of the Stream Diversion Design Studies, Portage Creek in Bryant Mill Pond	321
8	05/00/92	Blasland, Bouck & Lee, Inc.	U.S. EPA	Description of the Current Situation: Tables (Volume 2 of 7)	211

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
9	05/00/92	Blasland & Bouck Engineers P.C.	U.S. EPA	Description of the Current Situation: Drawings for the Allied Paper, Inc. Site (Volume 3 of 7)	37
10	05/00/92	Blasland & Bouck Engineers P.C.	U.S. EPA	Description of the Current Situation: Aerial Photographs for the Allied Paper, Inc. Site (Volume 4 of 7)	35
11	05/00/92	Blasland & Bouck Engineers P.C.	U.S. EPA	Description of the Current Situation: Land Use Figures for the Allied Paper, Inc. Site (Volume 5 of 7, Appendix B)	13
12	05/00/92	Blasland, Bouck & Lee, Inc.	U.S. EPA	Description of the Current Situation: Appendices A-D (Volume 6 of 7)	253
13	05/00/92	Blasland & Bouck Engineers* P.C.	U.S. EPA	Description of the Current Situation: Stiff Diagrams for the Allied Paper, Inc. Operable Unit (Volume 7 of 7, Appendix E)	14
14	07/00/92	Blasland, Bouck & Lee, Inc.	U.S. EPA	Description of the Current Situation: Text (Volume 1 of 7)	292
15	04/00/94	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS: Draft Technical Memorandum 11 for the Allied Paper, Inc. Operable Unit	42
16	08/00/97	Blasland, Bouck & Lee, Inc.	U.S. EPA	Remedial Investigation Report for the Allied Paper, Inc. Operable Unit (DRAFT)	98
17	08/00/97	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS: Alternatives Array Document for the Allied Paper, Inc. Operable Unit (DRAFT)	65

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18	08/00/97	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS Technical Memorandum 7 for the Allied Paper, Inc. Operable Unit	250
19	02/04/98	Stimple, B., U.S. EPA	Cornelius, S., MDEQ	Letter Forwarding Attached SRD Waste Water Discharge Permit Applica- tion for the Allied Paper (Bryant Mill Pond) Site	16
20	02/10/98	Cornelius, S., MDEQ	Brown, M., Blasland, Bouck & Lee, Inc.	Letter re: Preparation for the Emergency Removal Action at the Allied Paper Property/ Bryant Mill Pond Oper- able Unit 1	2
21	02/20/98	Brown, M.; Blasland, Bouck & Lee, Inc.	Cornelius, S., MDEQ	Letter re: Preparation for the Emergency Removal Action at the Allied Paper, Inc. Operable Unit	2
22	02/26/98	Cornelius, S., MDEQ	Stimple, B., U.S. EPA	Letter re: SRD Document Application for the Removal Action at the Bryant Mill Pond Portion of the Allied Paper Operable Unit	1
23	03/11/98	Stimple, B., U.S. EPA	Cornelius, S., MDEQ	Letter re: U.S. EPA's Request for Michigan ARARs for the Allied Paper Site Removal Action	2
24	00/00/00	Ullrich, D., U.S. EPA	Fields, T., U.S. EPA/ OSWER	Action Memorandum: Request for a Time- Critical Removal Action and a \$2 Million Exemption at the Allied Paper/ Portage Creek/Kalamazoo River Superfund Site (PENDING)	

AR

U.S. ENVIRONMENTAL PROTECTION AGENCY

ADMINISTRATIVE RECORD
FOR
ALLIED PAPER/PORTAGE CREEK/KALAMAZOO RIVER SITE
KALAMAZOO, MICHIGANUPDATE #3
MAY 22, 1998

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	01/00/73	MDNR/Bureau of Water Management	MDNR	Report: Polychlorinated Biphenyl Survey of the Kalamazoo River and Portage Creek in the Vicinity of the City of Kalamazoo 1972	8
2	12/00/84	NUS Corporation	State of Michigan	Feasibility Study of Alternative: Work Plan for the Kalamazoo River PCB Project	23
3	10/07/85	VandeBunt, R., MDNR	Eaton, R., Allied Paper, Inc.	Letter re: Odor Control Program at Allied Paper	2
4	02/00/86	Allied Paper/ Varnum, Riddering, Schmidt & Howlett	U.S. EPA	Proposal for Implemen- tation of Immediate Remedial Action Plan and for Assessment of Future Remedial Action Plan	45
5	02/00/86	Suppnick, J. & W. Creal; MDNR	MDNR	Report: Physical, Chem- ical and Biological Monitoring Results from the Kalamazoo River, Comstock to Plainwell 1984	75
6	03/00/86	NUS Corporation	State of Michigan	Feasibility Study of Alternative: Volume II (Appendices) for the Kalamazoo River PCB Project (DRAFT)	111
7	06/23/86	Eaton, R., Allied Paper, Inc.	Turton, D., MDNR	Letter re: Review and Status of the Odor Control Program at Allied Paper	3
8	07/00/86	NUS Corporation	State of Michigan	Feasibility Study of Alternatives: Addendum for the Kalamazoo River PCB Project	46

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
9	11/19/86	Wallace, C., MDNR	Eaton, R., Allied Paper, Inc.	Letter Forwarding Attached (1) Site Inspection Report and (2) Hazardous Ranking System Packet for the Allied Paper/Portage Creek/Kalamazoo River Site	93
10	11/20/86	Schuesler, S., Michigan Department of the Attorney General	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Letter re: Allied's Proposed Reimpoundment of Bryant Mill Pond	2
11	02/05/87	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Ostrodka, S., U.S. EPA	Letter re: Allied's Comments on Documents Pertaining to the Site Assessment for the Allied Paper/Portage Creek/Kalamazoo River Site	63
12	05/27/87	Krause, P., Kalamazoo County Department of Human Services	Eaton, R., Allied Paper, Inc.	Letter re: KCDHS/MDNR's May 12, 1987 Inspection of the Allied Paper Site	2
13	07/29/87	Eaton, R., Allied Paper, Inc.	Akers, J., Kalamazoo County Health Department	Letter re: Resubmittal of Allied's Sanitary Landfill License Renewal Package w/ Attachments	6
14	07/29/87	Eaton, R., Allied Paper, Inc.	Leep, T., MDNR	Letter re: Allied's Comments on MDNR's May 1, 1987 Denial Notifica- tion for Renewal of Allied's Solid Waste Disposal Area License	7
15	00/00/88	Wilkins & Wheaton Environmental Services, Inc.	U.S. EPA	Proposed Work Plan for the Hydrogeologic Inves- tigation Addendum for the Allied Paper, Inc. Sanitary Landfill	7

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
16	01/23/88	Veen, R., GZA- Donohue	Creal, W., MDNR	Memorandum Forwarding Attached PCB Data for Lake Allegan, Allegan City, Otsego City and Bryant Mill Pond	6
17	07/05/88	Peterson, G., LTI-Limno- Tech, Inc.	Creal, W., MDNR	FAX Transmission re: Preliminary Analytical PCB Results for the Bryant Mill Pond Pilot Sediment Stations	4
18	07/13/88	Peterson, G., LTI-Limno- Tech, Inc.	Martin, A., OBG Laboratories Organics Group	FAX Transmission re: Final List of Requested Sample Analyses for the Portage Creek Sediment Phase II Program	13
19	08/04/88	Finch, C., U.S. EPA/ GLNPO	Zugger, P., MDNR	Letter re: U.S. EPA's Comments on the Draft Remedial Action Plan for the Kalamazoo River Area of Concern w/ Attachments	91
20	00/00/89	H.M. Holdings, Inc./Allied Paper, Inc.	U.S. EPA	Preliminary and Partial Results for the Stream Diversion Design Studies for Portage Creek in Bryant Mill Pond	85
21	01/30/89	Leep, T., MDNR	Flanagan, T., Allied Paper, Inc.	Letter re: MDNR's Comments on Allied's Hydrogeologic Investi- gation at the Allied Paper Site	2
22	05/15/89	Leep, T., MDNR	Flanagan, T., H.M. Holdings, Inc.	Letter re: MDNR's Approval of the April 27, 1989 Work Plans for the Type III Landfill, Dewatering Lagoons and Seeps #1 and #2	1
23	06/00/89	O'Brien & Gere Engineers, Inc.	U.S. EPA	Maintenance Manual: Stream Diversion Alterna- tives (DRAFT) for the Allied Paper Site	12

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
24	06/01/89	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Flanagan, T., Allied Paper, Inc.; et al.	Letter Forwarding Attached Michigan Attorney General's May 31, 1989 Letter re: Concerns and Proposed Performance Standards at the Allied Paper Site	7
25	07/06/89	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Schuesler, S., Michigan Department of the Attorney	Letter re: Changes to the Work Plan for Stream Diversion at the Allied Paper Site	2
26	07/10/89	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Cavanaugh, K., Michigan Department of the Attorney	Letter re: Allied's Responses to MDNR's Comments on the Work Plan for the Stream Diversion Design Studies for the Allied Paper Site	5
27	09/12/89	Peterson, G., LTI-Limno- Tech, Inc.	Waggoner, C., MDNR	FAX Transmission Forward- ing Attached Canonic Environmental September 7, 1989 Letter re: Proposal for Test Pit Excavation at the Former Allied Paper Site	7
28	09/22/89	Cavanaugh, K., Michigan Department of the Attorney General	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Letter re: MDNR's Comments on the September 7, 1989 Workplan for Test Pit Excavation for the Allied Paper Site	4
29	11/21/89	Waggoner, C. & W. Creal; MDNR	Schuesler, S. & K. Cavanaugh; Michigan Department of the Attorney General	Memorandum re: Proposed Addendum to the Work Plan for the Stream Diversion Design Studies at Portage Creek in Bryant Mill Pond	13
30	01/04/90	Waggoner, C. & W. Creal; MDNR	Schuesler, S. & K. Cavanaugh; Michigan Department of the Attorney General	Memorandum re: Interim Remedial Action Involving Diversion of Portage Creek	2

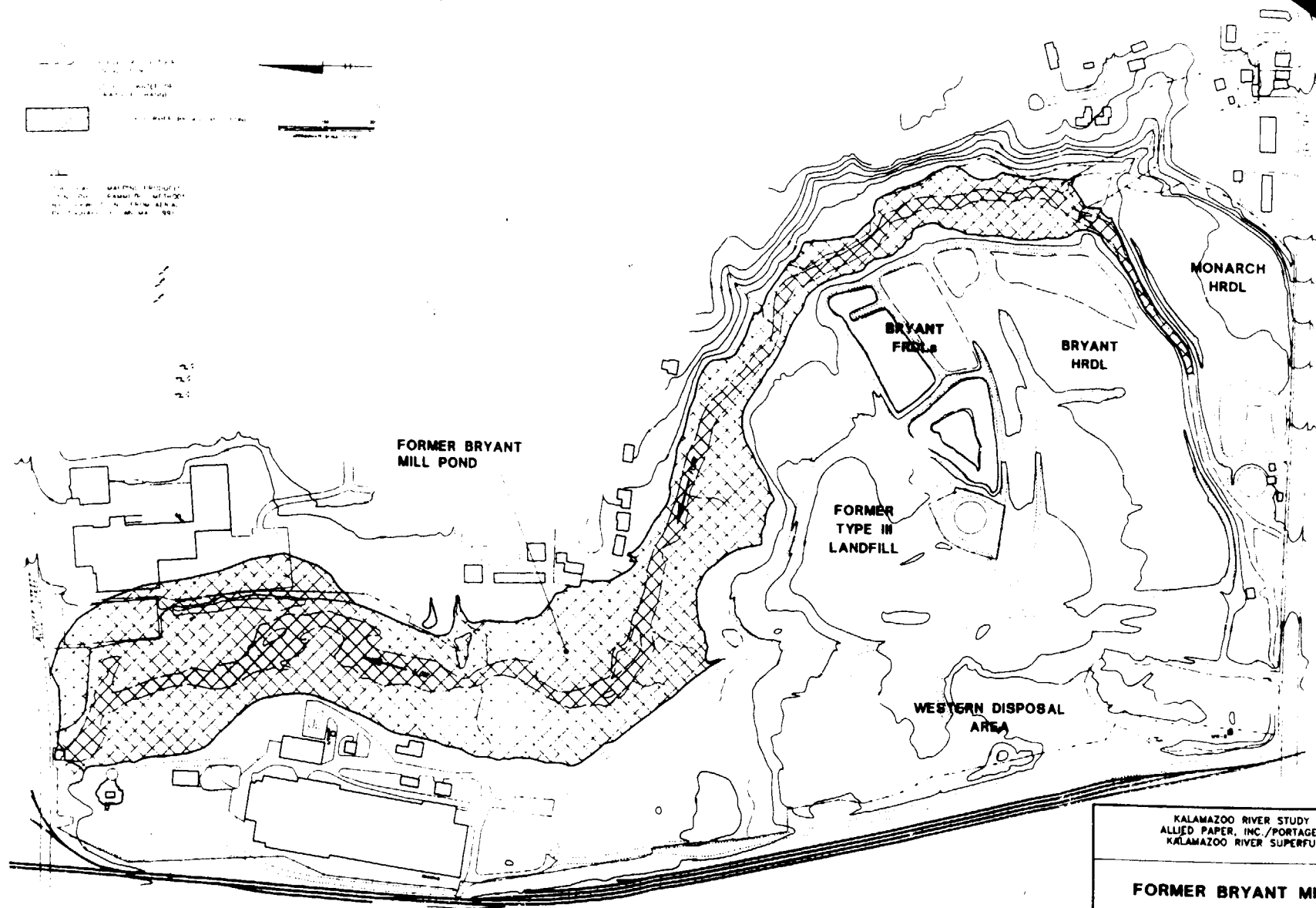
<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
31	01/29/90	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Schuesler, S., Michigan Department of the Attorney General	Letter re: Allied's Response to MDNR's January 4, 1990 Memo- randum Concerning Various Issues at the Allied Paper Site	2
32	02/00/90	O'Brien & Gere Engineers, Inc.	U.S. EPA	Contract Documents: <i>Stream Diversion Concep- tual Design</i> for the Bryant Mill Pond Site (DRAFT)	86
33	03/08/90	Luzkow, S., MDNR	Leep, T., et al; MDNR	Memorandum Forwarding Attached March 7, 1990 <i>Draft Preliminary Health Assessment</i> for the Allied Paper/Portage Creek/Kalamazoo River Site	25
34	03/15/90	Waggoner, C. & W. Creal; MDNR	Schuesler, S. & K. Cavanaugh; Michigan Department of the Attorney General	Memorandum re: Proposed Interim Remedial Action Involving Diversion of Portage Creek	7
35	06/08/90	Roy F. Weston, Inc.	U.S. EPA	Certificates of Analysis for Samples taken May 23, 1990 at the Allied Paper/Bryant Mill Pond Site	27
36	06/25/91	DeWitt, J., Varnum, Riddering, Schmidt & Howlett	Adams, L., U.S. EPA	Letter re: Dewatering Lagoon Operation at the Allied Paper Site	2
37	07/24/91	LTI-Limno- Tech, Inc.	U.S. EPA	<i>Temporary Water Manage- ment Plan</i> for the Allied Historical Residuals Dewatering Lagoons	8
38	09/00/91	LTI-Limno- Tech, Inc.	U.S. EPA	<i>Landfill Erosion Control Plan</i> for the Allied Paper Site	18

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
39	01/29/92	Brown, M., Blasland & Bouck Engineers, P.C.	Krause, P., Kalamazoo County Health Department	Plan for Erosion Repair at the Bryant HRDL Dikes w/ Cover Letter	9
40	03/10/92	Brown, M., Blasland & Bouck Engineers, P.C.	Cornelius, S., MDNR	Draft Remedial Investi- gation Air Monitoring Program: Sampling Network Design and Site Selection for the Allied Paper/ Portage Creek/Kalamazoo River Site w/ Cover Letter	13
41	12/00/92	Blasland & Bouck Engineers, P.C.	U.S. EPA	HRDL Erosion Control Maintenance Plan for the Allied Paper/Portage Creek/Kalamazoo River Site	15
42	06/00/93	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS Quality Assurance/ Quality Control Review of Historical Studies and Data Plan for the Allied Paper/Portage Creek/Kalamazoo River Site	38
43	07/00/93	Blasland & Bouck, Engineers, P.C.	U.S. EPA	RI/FS Field Sampling Plan for the Allied Paper, Inc. Operable Unit	268
44	07/00/93	Blasland & Bouck, Enginners, P.C.	U.S. EPA	RI/FS Field Sampling Plan for the Allied Paper/Portage Creek/ Kalamazoo River Site	219
45	07/00/93	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS Work Plan for the Allied Paper/Portage Creek/Kalamazoo River Site	276
46	03/01/94	Mottinger, K., City of Kalamazoo/ Department of Public Utilities	Flaherty, B., H.M. Holding, Inc.	Letter Forwarding Attached Individual Control Document for the Allied Paper Dewater- ing Lagoons	26

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
47	06/22/94	Solid and Materials Engineers, Inc.	LTI-Limno-Tech, Inc.	Dam Safety Inspection Report for the Bryant Mill Dam	18
48	04/00/95	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS Technical Memorandum 13: Water Well Inventory for the Allied Paper/Portage Creek/Kalamazoo River Site	49
49	09/00/96	Blasland, Bouck & Lee, Inc.	U.S. EPA	RI/FS Addendum to Technical Memorandum 3: Floodplain Soils Investigation for the Allied Paper/Portage Creek/Kalamazoo River Site	59
50	05/29/97	Brown, M., Blasland, Bouck & Lee, Inc.	Howard, A. and G. Carpenter; MDEQ	FAX Transmission Forwarding Attached U.S. EPA (1) May 20, 1997 Letter to Congressman Upton and (2) April 24, 1997 Letter to Kalamazoo River Area of Concern Public Advisory Council re: PCB Contamination at the Bryant Mill Pond	6
51	08/00/97	Camp, Dresser & McKee	U.S. EPA	Ecological Risk Assessment (Final Draft) for the Allied Paper/Portage Creek/Kalamazoo River Site	122
52	08/22/97	Ecology and Environment, Inc.	U.S. EPA	Report: Sampling of PCB's at the Allied Paper Site	27
53	08/29/97	Solid and Materials Engineers, Inc.	LTI Environmental Engineering	Dam Safety Inspection Report for the Bryant Mill Dam	15
54	09/09/97	Ecology and Environment, Inc.	U.S. EPA	Report: Evaluation of Interim Remedial Measures for the Bryant Mill Pond/Portage Creek/Allied Paper Site (DRAFT)	31

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
55	10/06/97	Peterson, G. & C. Whiting; LTI-Limno- Tech, Inc.	Stimple, B., U.S. EPA	Letter re: Daily Average Flows for Portage Creek w/ Attached Spreadsheets and Map	7
56	02/03/98	U.S. EPA; et al.	U.S. EPA	Site Visit Report for the Portage Creek/Kalamazoo River Site	15
57	02/13/98	U.S. Army Corps of Engineers/ Omaha District	U.S. EPA	Draft Scope of Work for Rapid Response: Interim Removal Action at Bryant Mill Pond	64
58	03/17/98	U.S. Army Corps of Engineers	U.S. EPA	Cost Comparison: USACE October 1997 Estimate vs. Weston March 1998 Proposal for the Bryant Mill Pond Removal Action at the Kalamazoo River Site	1
59	04/22/98	Cornelius, S., MDEQ	Stimple, B., U.S. EPA	Letter re: Michigan ARARs for the Allied Paper/ Bryant Mill Pond Emer- gency Removal Action	5

Appendix B



KALAMAZOO RIVER STUDY GROUP
 ALLIED PAPER, INC./PORTAGE CREEK/
 KALAMAZOO RIVER SUPERFUND SITE

FORMER BRYANT MILL POND

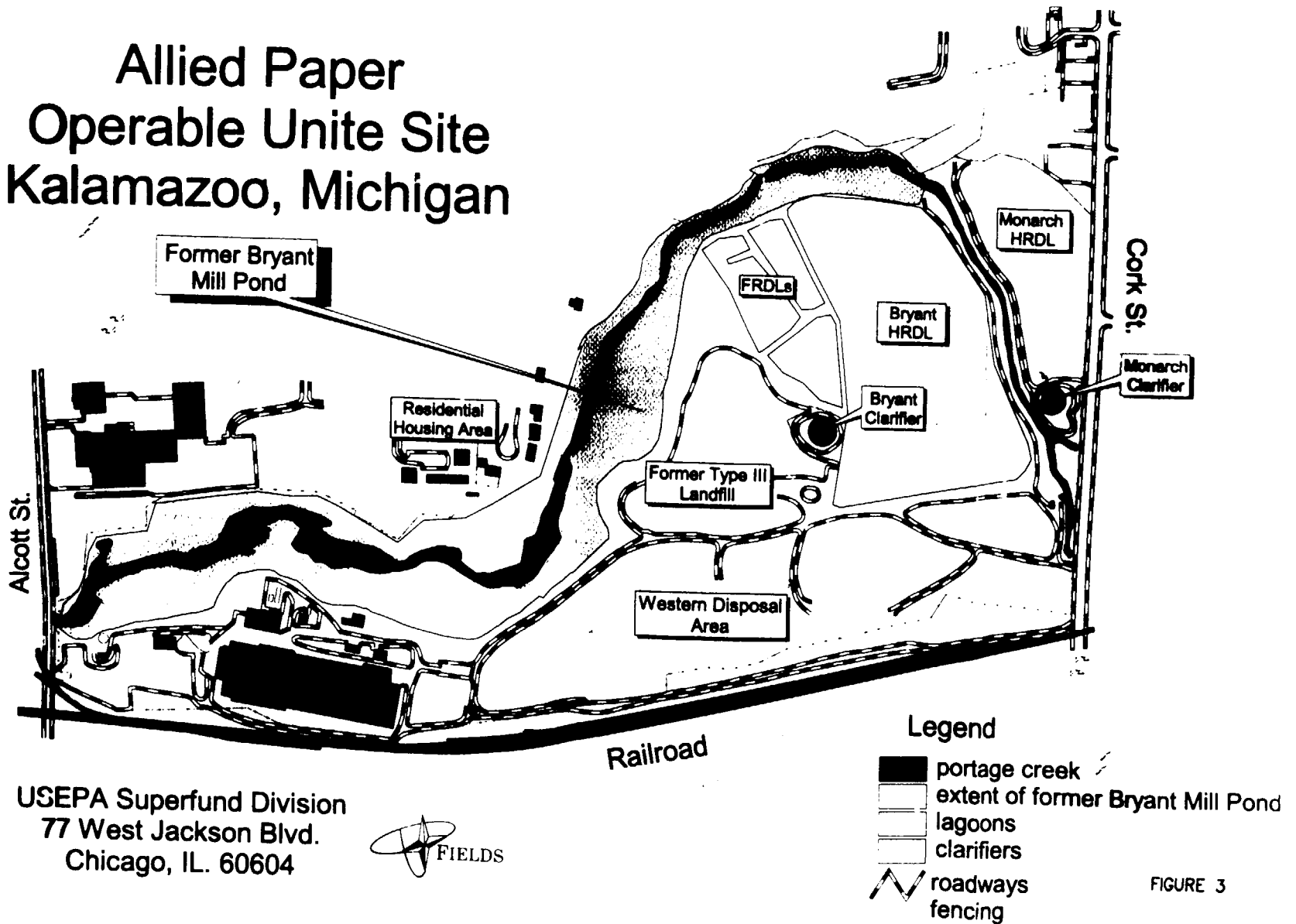
BBL

BLASLAND, BOUCK & LEE, INC.
 engineers & scientists

FIGURE
2

Appendix C

Allied Paper Operable Unit Site Kalamazoo, Michigan



USEPA Superfund Division
77 West Jackson Blvd.
Chicago, IL. 60604



FIGURE 3

Appendix D

ADMINISTRATIVE RECORD
FOR
ALLIED PAPER

Kalamazoo, Michigan

December 2, 1991

<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
07/13/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Cornelius, S., MDNR	Fence Status Report	2
07/26/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Cisneros, J., U.S. EPA	Letter on Fence Specifications	1
09/19/90	Steadman, P., U.S. EPA	Cornelius, S., MDNR	Generalized Sketch of Citizens' Alter- native to Fencing	2
09/30/90	Weston, Inc.	U.S. EPA	Site Assessment	17
10/03/90	Truchan, J., MDNR	Bowden, R., U.S. EPA	Letter Regarding Restriction of Access/Attached Correspondence Dated 6/22/90	4
10/15/90	DeWitt, J., Varnum, Rid- dering, Schmidt & Howlett	Cornelius, S., MDNR	Letter Regarding Residential Fence Specifications	2
10/22/90	DeLach, D., Homecrest Circle Assoc.	Steadman, P., U.S. EPA	Request for a Fence Specification Vari- ance	3
11/01/90	Ullrich, D., U.S. EPA	Breslow, S., H.M. Holdings Co.	Administrative Order by Consent	14
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U.S. ENVIRONMENTAL PROTECTION AGENCY

ADMINISTRATIVE RECORD
FOR
ALLIED PAPER/PORTAGE CREEK/KALAMAZOO RIVER SITE
KALAMAZOO, MICHIGANUPDATE #2
APRIL 2, 1998

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U.S. ENVIRONMENTAL PROTECTION AGENCY
ADMINISTRATIVE RECORD
FOR
ALLIED PAPER/PORTAGE CREEK/KALAMAZOO RIVER SITE
KALAMAZOO, MICHIGAN

UPDATE #3
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